

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2017

DELIVERED ON : 11.12.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.256 of 2014

1.D.Ramakrishnan
S/o.Damodarasamy

2.Chandra Importers Inc.
160, Home Street, Elmira,
having a branch at
No.46, R.K.Mills B Colony Road,
Peelamedupudur,
Coimbatore - 641 004.
represented by Power of Attorney
Mr.D.Ramakrishnana

.... Appellants/Accused 1 and 2

vs.

Intelligence Officer,
Narcotic Control Bureau,
South Zonal Unit,
No.8-3A, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.

(in NCB File No.48/1/1/2008/NCB/MDS) Respondent/Respondent

Criminal Appeal filed u/s.372 of the Code of the Criminal Procedure
r/w Section 36-B of the Narcotic Drugs and Psychotropic Substances Act,
1985, against the judgment of learned Additional Sessions Judge/Presiding
Officer, Special Court for Essential Commodities Act Cases, Coimbatore,
passed in C.C.No.100 of 2008 on 25.04.2014.

For Appellants : Mr.V.Gopinath, senior counsel for
Mr.T.K.S.Gandhi

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor [NCB cases]

JUDGMENT

This appeal arises against judgment of learned Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore, in C.C.No.100 of 2008 on 25.04.2014.

2. Prosecution case is that on the basis of information had from NCB Head Quarters, New Delhi and Specific Intelligence gathered by Narcotics Control Bureau, South Zonal Unit, that one Seethapathy, President of M/s.Chandra Importers Inc, 160, Home Street, Elmira, New York, was indulging in illegal Internet Pharmacy business and had a branch office at No.46, R.K.Mills, 'B' Colony Road, Peelamedu Pudur, Coimbatore and A1, one D.Ramakrishnan (hereinafter refer to Ramakrishnan only as A1) residing in the above address was managing the activities of the said branch at Coimbatore and the said Ramakrishnan procured psychotropic substances such as Alprazolam, Lorazepam, Nitrozepam etc on daily orders received by him through E-mail from Seethapathy of M/s.Chandra Importers Inc, New York, packed it at his office and effected despatch to various customers abroad, officers camping at Coimbatore conducted a search in the premises of second

appellant on 25.01.2008 at about 13.00 hours in the presence of two independent witnesses and the accused D.Ramakrishnan after complying with the necessary formalities under section 50 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'Act'). On inquiring about the operations of M/s.Chandra Importers Inc, A1 informed that he was the Branch Manager of the company and his boss Seethapathy used to inform consolidated requirement of drugs through e-mail which he purchased from local pharmacies, packed and sent to individual customers abroad. He showed the files containing packing slips and receipts for the purchase of drugs. The drugs dealt with by him included psychotropic substances such as Alprazolam, Lorazepam, Nitrozapam etc. He also informed that he had not obtained any permission from the competent authority i.e the Narcotics Commissioner, Central Bureau of Narcotics, Gwalior for export of the above scheduled psychotropic substances under the Act. He showed two computers used for the business purpose. The officers seized the mercury make CPU and Wipro make CPU along with mouse and keyboards. The hard disk of CPU mercury make bearing Sl.No.6PS35DSE and the hard disk of Wipro make bearing Sl.No.5LAK86PM were detached from the CPU and packed and given markings P1 and P2 respectively. The mouse and the keyboards were packed and given the marking P3. The packages were sealed with NCB seal No.12. During enquiry, A1 showed box files containing packing

cum despatch slips to individual customers and other documents regarding establishment and dealings of the company. All these documents, required for investigation, were listed in Annexure A and seized. The mahazar proceedings were completed at about 20.00 hours on 25.01.2008 on the spot. Then the seizing officer summoned A1 to appear before him to "Q" Branch office, 60 Lakshmi Mills Quarters, NGR Street, Coimbatore, for further enquiry. Accordingly, A1 accompanied the officers voluntarily to "Q" Branch office and tendered a voluntary statement under section 67 of the Act. He admitted to procurement, possession, using of the residential premises for packing, transportation and illicit export of psychotropic substances out of India to various destinations abroad. Thus, A1 entered into criminal conspiracy for illicit export of psychotropic substances in contravention of the provisions of section 8(c) r/w 22, 23, 25, 27A, 29 and 38 of the Act and Rule 53, 53A and 56 of Narcotics Drugs and Psychotropic Substances Rules, 1985. A1 was placed under arrest at 11.00 hours on 26.01.2008 and sent to judicial custody. As per the directions of Court, two hard disks were sent to Government Examiner of Questioned Documents, Directorate of Forensic Science, Hyderabad. The report in hard and soft copy revealed that the psychotropic substances dealt with were of commercial quantity. Examination of the purchase bills for the period from 01.01.2006 to September 2007 produced by Shri Kannan Departmental Stores, Coimbatore and from 01.12.2006 to 31.10.2007

produced by Shri Lakshmi Pharmacy, Coimbatore, revealed that considerable quantity of psychotropic substances have been illegally exported without permission from Narcotics Commissioner, Gwalior. There had been correspondences between A1 and Seethapathy with the concurrence of other accused authorizing A1 to open a Branch office of M/s.Chandra Importers Inc, in Coimbatore and illegally export psychotropic substances to various destinations abroad. During investigation, it came to light that a consignment of Narcotics Substances despatched by M/s.Chandra Importers Inc, Coimbatore, was seized by Air Customs, Chennai. Thus, A1 to A8 had contravened the provisions of section 8(c) r/w sections 22, 23, 25, 27A, 29 & 38 of the NDPS Act, 1985. The Company, by name, M/s.Chandra Importers Inc, Coimbatore/A2, its Manager/A1, its Chairman and President and 5 others comprising the Board of Directors of the Company were arrayed as accused.

3. The case was taken on file in C.C.No.100 of 2008 on the file of learned Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore. As Chairman/President and Directors of the Company were absconding, non-bailable warrants were issued against them but the same could not be executed and hence, the case against them was split up in C.C.No.35 of 2010. Thus, appellants, Branch Manager/A1 and Company/A2 came to face prosecution in C.C.No.100 of

2008. Prosecution examined 17 witnesses and marked 148 exhibits and 6 material objects. None were examined on behalf of defence/accused nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 17.04.2014, rendered a finding of conviction and sentenced first accused to 10 years R.I. and fine of Rs.1,00,000/- i/d 1 year R.I. for each of the offences u/s.8(c) r/w 23(c), 25 and 29 of the Act and second accused to pay fine of Rs.1,00,000/- for each of the offences u/s.8(c) r/w 23(c) and 29 of the Act. Trial Court directed that sentences run concurrently. There against, this appeal.

4. Heard learned senior counsel for appellants and learned Special Public Prosecutor [NCB cases] for respondent.

5. The present is a case where prosecution alleges illegal export of narcotic drugs and psychotropic substances in commercial quantities on the basis of extraction of contents in two hard disks and the report of an expert in Ex.P148 informing calculation details for each substance. The fact of purchase of the drugs by the accused towards illegal export thereof is sought to be established through confession of A1. Prosecution also relies on evidence of PWs.8, 9, 10 and 11, postal officials and their identification of A1 as the person who effected dispatch of drugs. It is also the prosecution

case that custom authorities retained certain parcels of drugs meant for export and, admittedly, the same had not been seized by the investigation officer.

6. Learned senior counsel for appellants contended that the entire prosecution case was flawed. The search conducted on 25.01.2008 was illegal. The recoveries made through were false. The hard disks allegedly seized at the second accused's premises had not been attested by witnesses nor had the signature of the accused been obtained thereon in indelible ink. The need to forward the two hard disks to the Government Examiner of Questioned Documents would arise only if tampering of the contents was suspected and PW-1 has admitted that there was no such suspicion. Admittedly every hard disk has a distinct number and while in Ex.P2 - Mahazar, Ex.P32 - Remand Report and Annexure to Remand Report and Ex.P33 - Remand Report addressed to Superintendent, NCB, u/s.57 of the Act, the number of hard disk is informed to be 5L8K86PM and in Ex.P34 - Forwarding Memo 2/08 - 27.01.2008 addressed to Superintendent Officer in charge of the godown, NCB, Chennai, the number is informed to be 5LBK86PM and that in Ex.P146, report of the Government Examiner of Questioned Documents, the number is informed as 5LAK86PM. No modem had been seized although PW-1 having admitted to seeing the same in the company premises. It was not

possible to communicate via computer without addressing communications to particular e-mail accounts but no particulars there regards had been gathered. The prosecution has avoided conducting search in the presence of independent witnesses. Of the two witnesses one PW-3 admittedly was an Inspector of Police, CCIW, CID, Karur, while PW-4, who was a Cashier in a private concern, had initially been examined and owing to his illness his further examination or cross could not be effected. Serial No.3, Mahazar, dated 25.01.2008 in Annexure-III in the list of documents is shown to have been drawn at entry gate of Thiruvannamiyur Bus Stand, Chennai and it is the evidence of PW-1 that he had no knowledge about it. The confession of first accused cannot be seen as voluntary as it admittedly was recorded at 'Q' Branch Office, 60, Laxmi Mills Qtrs., Coimbatore, in the presence of police officials. In any event, the same had been retracted. Learned senior counsel also submitted that the contents of hard disk had been tampered as in Ex.P145 - Letter dated 01.05.2008 issued by Government Examiner of Questioned Documents regarding the report in CCH-17-18/2008 dated 30.04.2008 with Annexure A, the date of creation of file was later than the date when it was last written.

7. Learned Special Public Prosecutor submitted that materials recovered could be relied upon even if the search had been illegal. Learned

Special Public Prosecutor submitted that while Ex.P60 - Shri Kannan Departmental Stores (Medical) Cash Bills 236 numbers, Ex.P84 - Ledger copies of Shri Lakshmi Pharmacy and Ex.P85 - Copies of Bills of Shri Lakshmi Pharmacy issued to D.Ramakrishnan made clear that first accused on behalf of second accused company was purchasing medicines on a routine basis. Ex.P145, the report of Government Examiner of Questioned Documents, contained details in proof of export thereof, the transactions relating thereto, the expenditures incurred by A1 on behalf of A2 company towards conduct of illegal export and the reimbursement received by him. Placement of orders were made through e-mail messages and there were corresponding US and Indian drug names evidencing despatch by air. While the accused carried on operations at America, tax had been paid here. Ex.P148 contained a detailed working of each substance exported. Learned Special Public Prosecutor contended that second accused company had nothing to show by way of local sales and in his Section 313 Cr.P.C. questioning, first accused had admitted purchases. Learned Special Public Prosecutor also contended that accused had not informed of suffering any threat in rendering his statement and as such the confession statement has to be taken as voluntary.

8. This Court has recorded the above only to inform the broad outline of the rival cases. The Supreme Court in ***Beckodan Abdul Rahiman v. State***

of Kerala [AIR 2002 SC 1810] after taking note of the observation of the Constitutional Bench of the Supreme Court in *State of Punjab v. Baldev Singh [1999 (6) SCC 172]* has held as follows:

‘(3) Keeping in mind the grave consequences which are likely to follow on proof of possession of illicit articles under the Act, namely, the shifting of the onus to the accused and severe punishment to which he becomes liable, the Legislature has enacted and provided certain safeguards in various provisions of the Act including Sections 42 and 50 of the Act. A Constitution Bench of this Court in State of Punjab v. Baldev Singh (1999 (6) SCC 172) has held that while conducting search and seizure in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the Act are also required to be followed. The harsh provisions of the Act cast a duty upon the prosecution to strictly follow the procedure and compliance of the safeguards. ...’

In such case, the Supreme Court rendered a finding of acquittal informing that mandatory provisions both of Sections 42 and 50 of the Act had not been complied with with the result that the prosecution case was rendered unestablished. The decision in this case would turn on compliance or otherwise with the provisions of Section 42 of the Act. This Court holds that Section 42 of the Act indeed stands contravened in the present case and once this Court does so, it becomes unnecessary to enter upon a discussion on facts.

9. The reasons for our finding are as follows:

Sections 41 and 42 of the Act read as follows:

'41. Power to issue warrant and authorisation. - (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable

under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation. - (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a

State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,? -

- (a) enter into and search any such building, conveyance or place;*
- (b) in case of resistance, break open any door and remove any obstacle to such entry;*
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and*
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed*

any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.'

The Magistrate informed u/s.41(1) of the Act may issue a warrant for arrest or search whether by day or night while u/s.41(2) an officer informed therein may authorise any officer sub-ordinate to him but superior in rank to a peon, sepoy or a constable to arrest a person or cause a search whether by day or by night. Under Section 42(1), an officer empowered thereunder on his own accord as distinct from under authority of another, may effect search, seizure and arrest between sunrise and sunset as distinct from whether by day or night permitted u/s.41 of the Act. Section 42 of the Act also contains a proviso that in particular circumstances envisaged therein, the officer may conduct a search between sunset and sunrise after recording the grounds of his belief. In the event of his so doing, sub-section 2 of Section 42 requires the officer to forward a copy thereof to the immediate superior within 72

hours. PW-1 admitted that he issued summons to A1 to appear before him at 21.00 hours on 25.01.2008 and A1 on his appearance before him gave a voluntary statement. PW-1 further deposed that based on the voluntary statement and material objects seized he issued the arrest memo contents of which were explained to A1 as were the reasons for his arrest. His evidence clearly informs that search and seizure were effected during night hours after the appearance of A1 before him. In the instant case, the prosecution really falls between two stools. Ex.P1 reads as follows:

'INFORMATION REPORT U/S.41(2) OF THE NDPS ACT 1985

Based on the inputs received from NCB Hqrs, New Delhi regarding the operation of Internet Pharmacy, further intelligence gathered indicates that "one Seethapathy, President of M/s Chandra Importers Inc, 160, Home Street, Elmira, New York is indulging in illegal Internet Pharmacy business is having a branch office at No.46, RK Mills, 'B' Colony Road, Peelamedu Pudur, Coimbatore and one D.Ramakrishnan residing in the above address is managing the activities of the said branch at Coimbatore. The said Ramakrishnan procures psychotropic substances such as Alprazolam, Lorazepam, Nitrozapam etc on daily orders received by him through E-mail from Seethapathy of M/s Chandra Importers Inc, New York, packs it at his office and dispatches to various customers abroad. Intelligence also indicated that for M/s Chandra Importers Inc, New York have opened an account in IDBI Bank, Coimbatore Branch and if Shri Ramakrishnan is enquired, the trafficking of Psychotropic substance to abroad through

internet pharmacy can be unearthed.

Place : Coimbatore (C Rahakrishna Pillai)
 Date : 25.01.2008 Superintendent NCB
 Time : 11.00 Hrs Camp at Coimbatore
Submitted to Zonal Director, NCB, SZU, Chennai camping at

Coimbatore

'IO Sundar to take necessary action as discussed.'

Ex.P1 explicitly reads as 'information report u/s.41(2) of the NDPS Act, 1985 Sd.....' The signatory thereto is C.Radhakrishna Pillai/PW-2. The endorsement found thereon is 'IO Sundar (PW-1) to take necessary action as discussed'. It bears a signature which is informed to be that of Davidson Devasirvatham, said to be a Zonal Director, one who has not been examined. The evidence of PW-2 is that he directly submitted Ex.P1 - Information Report u/s.41(2) of the NDPS Act, 1985, to the Zonal Director, Davidson Devasirvatham at Coimbatore, where he was also camping. PW-2 has deposed to the Zonal Director having signed the endorsement but that he did not know who wrote the same. It is the specific evidence of PW-2 that he did not authorise PW-1 to conduct search or arrest. Even if in the absence of examination of the Zonal Director Davidson Devasirvatham, this Court is to accept the endorsement found in Ex.P1, the same which reads as 'IO Sundar to take necessary action as discussed' cannot be equated to an authorisation given by him to PW-1 to arrest or cause search. It is necessary to note that the power to conduct search by day or night is restricted to one authorised by a Magistrate u/s.41(1) of the Act or by a superior officer u/s.41(2) of the

Act. Though the concluding portion of sub-section 2 of Section 41 of the Act permits an authorised officer 'himself to arrest such a person or search a building, conveyance or place', an officer acting on his own steam cannot take such action between sunset and sunrise as otherwise Section 42 of the Act which specifies action conditionally permissible during such hours in certain contingencies becomes redundant. If not understood as stated, issue of warrants by Magistrates and authorisation by superior officers spoken of in Section 41 are rendered dead letters. It is the evidence of PW-1 that PW-2 initially informed him orally and later in writing under Ex.P1 and the endorsement addressed to him required him to take necessary action and that he decided about the house search immediately on receipt of Ex.P1. Therefore, it is clear that PW-1 acted in exercise of powers vested in him u/s.42 of the Act. It is admitted case that PW-1 recorded Ex.P4 - the statement of A1, on 25.01.2008 at 09.00 p.m. i.e., after sunset and before sunrise. Contents of Ex.P1 even if taken to be true only can amount to information had by PW-1 from another and the proviso to Section 42 of the Act would require him both to reduce the same into writing and also to record the ground of his belief for conduct of search between sunrise and sunset and further to forward copies of both to his immediate official superior within 72 hours. The requirements of Section 42 of the Act, held to be mandatory, have not been complied with.

10. Learned Special Public Prosecutor required this Court to read Ex.P1 as compliance with Section 42(2) of the Act submitting that PW-2 had reduced the information received by him in writing and submitted the same to his immediate superior, the Zonal Director. PW-2, in cross, *inter alia* deposed as follows:

'... I deny the suggestion that I had known about the witnesses who had participated in the house search. I deny the suggestion that those witnesses reported to me at 13.00 hours on 25.1.2008. I deny the suggestion that "P.W.1 did not conduct any house search but myself and Zonal Director Davidson Devasirvatham were only present during the house search". I do not know about the handwritten endorsement in Ex.P1. The endorsement 'IO Sundar to take necessary action as discussed' was signed by Zonal Director Davidson Devasirvatham but I do not know as to who wrote that endorsement. Ex.P1 was submitted by me to my Zonal Director Davidson Devasirvatham directly at Coimbatore where he was also camping.....'

Learned Special Public Prosecutor required this Court to read the above extract as informing that PW-2 and the Zonal Director were present during the search. It is his submission that when so read, it would be seen that PW-2 had complied with Section 42(2) of the Act and the Zonal Director had in turn directed PW-1 to take necessary action. Learned Special Public Prosecutor further required this Court to see the endorsement 'IO Sundar to take necessary action as discussed' as authorising PW-1 to conduct search and

seizure. This Court fails to see how we can.

11. It does appear to this Court that it is in the realization that the requirement of submitting reports to the Superior Officer under the proviso to Section 42 of the Act have not been met, that Ex.P1, termed a report u/s.41(2) of the Act, subsequently has been introduced. This, this Court would think is the reason why Section 57 report in Ex.P33 makes no mention of Ex.P1. What is worse, Ex.P33 - Section 57 report dated 26.01.2008 i.e., the date immediately following the arrest and seizure, bears an endorsement of the Superintendent, NCB, Chennai, 'seen' of the date 27.01.2008 and informs production and deposit of the seized property in the Court for EC and NDPS Act Cases, Coimbatore, on 28.01.2008. Ex.P34 - Forwarding Memo No.2/2008 of NCB to the NCB Godown incharge dated 27.01.2008 and Ex.P35 - Godown receipt No.1/2008 dated 27.01.2008 issued by Superintendent, NCB, reveal that the seized goods indeed were deposited in the Narcotic Bureau Godown on 27.01.2008. The possibility of preparation of Ex.P33-Section 57 report on 26.01.2008 is ruled out and the preparation thereof only after 27.01.2008 is apparent. The prosecution case visits itself with falsity after falsity. Not only is Ex.P1 termed a report u/s.41(2) of the Act an afterthought but even Ex.P33 - Section 57 report is not of the date espoused. To repeat ourselves, the endorsement of the Zonal Director to the effect 'IO Sundar to take necessary

action as discussed', even if taken to be true, cannot be read as authorising PW-1 to search or cause arrest 'by day or night'. This Court sees such realisation as the reason for learned Special Public Prosecutor being at pains to inform compliance with Section 42(2) of the Act and by placing a totally unacceptable reading on the evidence of PW-2 extracted herein above. The evidence of PW-1 to the effect that immediately on receipt of Ex.P1 he decided about the house search, in our view, depicts the true state of affairs i.e., as a person authorised, he acted within his own powers u/s.42 of the Act but failed to comply with the requirements of Section 42(2) of the Act in reducing the information received by him into writing as also in recording the grounds of his belief that a search warrant or authorisation could not have been obtained by him without affording opportunity for concealment of evidence or facility for the escape of an offender, both of which are to be forwarded to the immediate official superior within 72 hours as required under section 42(2) of the Act. The genuineness of Ex.P1 itself is rendered highly doubtful since the same finds no mention in Ex.P33 - Section 57 report. PW-2 has spoken to his not knowing who made the endorsement even while confirming that the Zonal Director had signed the same and the Zonal Director himself has not been called as a witness.

Finding that the mandatory provision u/s.42(2) of the Act stands not complied with and finding much more that is wrong with the prosecution case

as indicated above, this Criminal Appeal is allowed. The judgment of learned Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore, passed in C.C.No.100 of 2008 on 25.04.2014, is set aside. Appellants are acquitted of all charges. First appellant is directed to be released forthwith unless his detention is required in connection with any other case. Fine, if any, paid shall be refunded.

11.12.2017

Note to office : Issue today

Index:yes/no
Internet:yes
gm

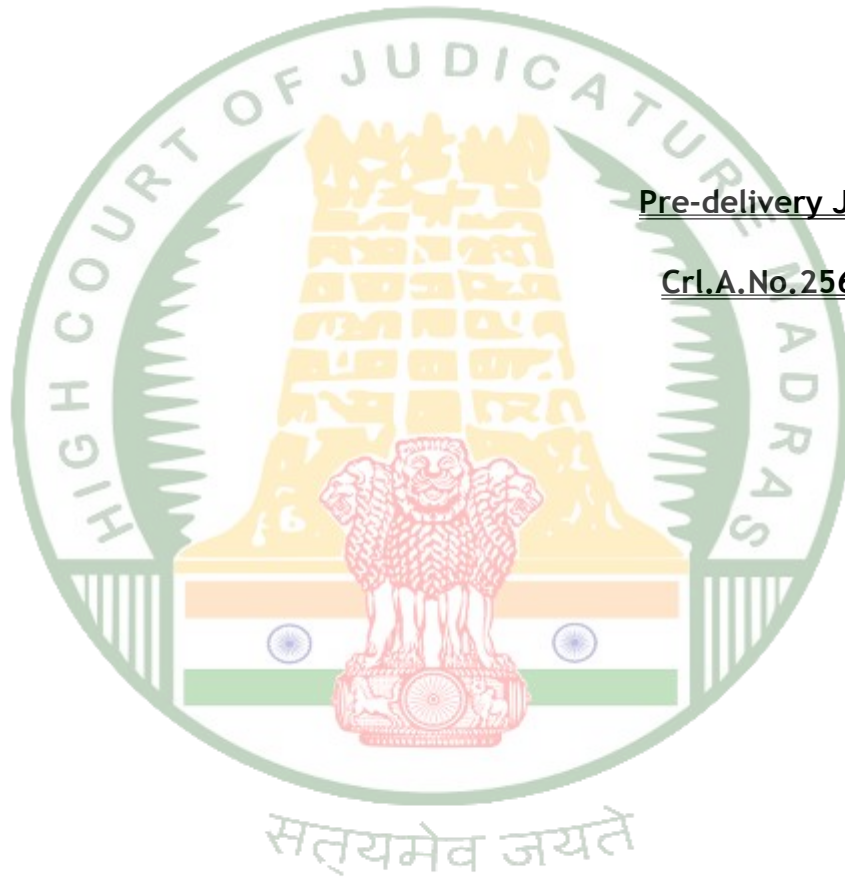
To

1.The Additional Sessions Judge/Presiding Officer,
Special Court for Essential Commodities Act Cases,
Coimbatore.

2.The Intelligence Officer,
Narcotic Control Bureau,
South Zonal Unit,
No.8-3A, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

3.Mr.N.P.Kumar,
Special Public Prosecutor [NCB Cases],
High Court, Madras.

C.T.SELVAM, J
gm



Pre-delivery Judgment
in
CrI.A.No.256 of 2014

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