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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
21.03.2018	28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Cr1.A. [MD]No.139 of 2014

and

M.P. (MD)No.2 of 2015

Ramesh

: Appellant/Accused No.2

Vs.

State, Through

The Superintendent of Customs,

Central Intelligence Unit,

Trichy, O.R.No.1/2010-CIU, Trichy. : Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374[2] of the Code of Criminal Procedure to call for the entire records connected with the Judgment in C.C.No.75 of 2010, dated 19.02.2014, on the file of the Additional District and Sessions Court Cum Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, Pudukkottai and set aside the same as illegal and acquit the appellant from the charges.

For Appellant : Mr.S.Sivakumar

For Mr.R.Alagumani

For Respondent : Mr.C.Arul Vadivel @ Sekar

Special Public Prosecutor for Customs

JUDGMENT

Based on source information, the Officers of the Central Intelligence Unit, Trichy, maintained surveillance near the Toll Plaza II at Thirumandhurai Village in Chennai - Trichy National Highway and on 13.01.2010, they intercepted an Eicher Mini Lorry, bearing Registration No.TN-31-F-8581, driven by Ramesh [A-2] and accompanied by Muthuraman [A-1] and on checking the Eicher Mini lorry, they found 493 Kilograms of Ganja concealed in a secret cavity designed in the false bottom of the vehicle. Further investigation was taken up and it came to light that apart from Muthuraman [A-1] and Ramesh [A-2], one Ravichandran was also involved in the offence. After completing the investigation, the Superintendent of Customs, Central Intelligence Unit, Trichy, filed a complaint against Muthuraman [A-1], Ramesh [A-2] and Ravichandran [A-3] before the Special Court for NDPS Act Cases, Pudukkottai for various offences under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, [for brevity, "the Act"], which was taken on file as C.C.No.75 of 2010.



2. Ravichandran [A-3] was shown as absconding accused. The case against Ravichandran [A-3] was split up and trial proceeded against Muthuraman [A-1] and Ramesh [A-2]. The Trial Court framed charges under Sections 8(c) r/w 20(b)(ii)(C) r/w 28 and 29 of the Act, for conspiracy, possession and transport of 493 kilograms of Ganja.

3. On the appearance of the accused, they were furnished with the copies of the relied upon documents under Section 207 Cr.PC., and the trial Court framed four charges against them for the aforesaid offences and when questioned, they pleaded "not guilty". In order to prove the case, the prosecution examined 9 witnesses and marked 51 exhibits and four Material Objects. When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.PC., they denied the same.

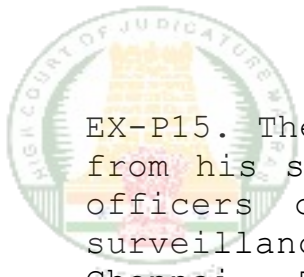
4. After considering the evidence on record, the Trial Court, by Judgment dated 19.02.2014, in C.C.No.75 of 2010, has convicted and sentenced both the accused, aggrieved by which, Muthuraman [A-1] and Ramesh [A-2] filed Crl.A.(MD).Nos.144 and 139 of 2014 respectively. During the pendency of the appeals, Muthuraman [A-1] died and his legal heirs did not come forward to prosecute the appeal. Hence, Crl.A.(MD).No.144 of 2014 was closed as abated, by order dated 07.09.2015. Ramesh [A-2], the appellant in Crl.A(MD). No.139 of 2014, has been convicted and sentenced as follows:-

Section of Law	Sentence of imprisonment	Fine amount
Section 8(c) r/w 20 (b)(ii)(C), 8(c) r/w 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.	To undergo rigorous imprisonment for ten years each.	Rs.1,00,000/, each in default to undergo rigorous imprisonment for one year. [Total fine amount Rs.3,00,000/- and default sentence 3 years].

The sentences have been ordered to run concurrently.

5. Heard Mr.S.Sivakumar, learned counsel, representing Mr.R.Alagumani, learned counsel appearing for the appellant/accused No.2 and Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor for Customs appearing for the respondent.

6. Jebaraj Rajkumar [PW-9], Superintendent of Customs, Trichy, received information from a secret informant on 07.01.2010, that some persons from Usilampatti area of Madurai District, are bringing 1½ tons of Ganja by an Eicher Mini Lorry bearing Registration No. TN-31-F-8581 from Andhra Pradesh. He recorded the information and prepared information report and submitted the same to the Joint Commissioner of Customs Headquarters, Trichy, vide



EX-P15. The Joint Commissioner received the same, as could be seen from his signature thereon. After the receipt of information, the officers of the Central Intelligence Unit started maintaining surveillance near Toll Plaza II at Thirumandhurai Village in Chennai - Trichy National Highway.

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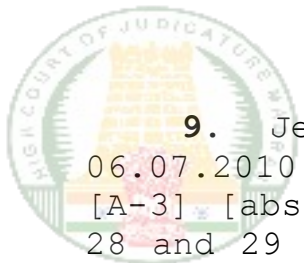
7. Jebaraj Rajkumar [PW-9], in his evidence, has stated that on 13.01.2010, around 02.00 p.m., he noted the vehicle bearing the Registration Number TN-31-F-8581 and directed the vehicle to be stopped; that he saw Ramesh [A-2] on the wheels and Muthuraman [A-1] by his side; that he enquired them and learnt their names; that two public witnesses were requisitioned; that he, along with the other officers, checked the vehicle and found the contraband therein; that since people gathered there, he decided to take the vehicle to the Customs Office located nearby; that a detention mahazar [EX-P3] was prepared on the spot; that the witnesses and the accused signed in EX-P3; that at the Customs Office, Trichy, around 09.00 p.m, the vehicle was thoroughly checked and in the secret cavity beneath the floor of the Eicher mini lorry, he found two bundles; that one bundle contained 102 big polythene packets and the other contained 111 small packets, packed with newspaper; that 102 polythene packets were divided into 40 + 40 + 22 and they were marked as L1, L2 and L3; that the contents in 102 packets were found to weigh 387.600 Kilograms; that the contraband in each lot was homogeneously mixed; that from each lot, two samples, each weighing 25 Grams, were drawn and were marked as L1S1; L1S2; L2S1; L2S2; L3S1 and L3S2; that each of the samples was separately kept in covers and the covers were sealed with the seal of Customs; that 111 newspaper packets were divided into three lots, namely, 40+40+31 and they were numbered as L4, L5 and L6; that the contraband weighed 105.400 kilograms; that from each lot, two samples, weighing 25 Grams each, were drawn and were marked as L4S1; L4S2; L5S1; L5S2, L6S1; and L6S2 and each sample was separately kept in covers and sealed; that the balance contraband was packed in 19 gunny bags [MO-2 series] and they weighed 492.700 kilograms; that the packing materials, in which the contraband was originally packed, were separately kept in three gunny bags [MO-3]; that the Eicher Mini Lorry [MO-1] was seized; that a detailed Mahazar (Ex.P.2) was prepared for the weighment, drawal of samples, packing and for seizure of the articles; that he questioned Ramesh [A-2] and recorded his statement under Section 67 of the Act and the same was marked as Ex.P.16; that on 14.01.2010, Muthuraman [A-1] and Ramesh [A-2] were arrested; that the arrest of Muthuraman [A-1] was intimated to his wife - Veerammal, on the same day; that likewise, the arrest of Ramesh [A-2] was also informed to his wife - Sumathi by telegram, on the same day; that the report under Section 57 of the Act (Ex.P.22) was submitted to the Joint Commissioner of Customs; that A-1 and A-2 were produced before the learned Judicial Magistrate No.I, Trichirappalli, along with the Eicher mini lorry, contraband, packing materials and samples, vide remand application [EX-P17].



In the remand application [EX-P17], the learned Judicial Magistrate No.I, Trichirappalli, has made the following endorsement:-

"Above said two accused produced at 06.00 p.m, on 14.01.2010. No complaints of ill-treatment by police. Ground for arrest informed. Remanded till 28.01.2010. Accused to be produced before the Special Court for E.C.Act Cases at Pudukkottai, on or before 28.01.2010".

8. Jebaraj Rajkumar [PW-9], in his evidence, has further stated that the learned Judicial Magistrate No.I, Trichirappalli, directed the Eicher mini lorry, contraband, packing materials and samples to be produced before the Special Court at Pudukkottai; that accordingly, they were produced before the Special Court at Pudukkottai, on 20.01.2010; that the learned Special Judge, Pudukkottai, directed the Eicher mini lorry, contraband, packing materials and samples to be kept in safe custody; that the learned Special Judge at Pudukkottai, directed the six lots of samples to be forwarded to the Customs House at Chennai for examination along with test memo [EX-P29]; that on 21.01.2010, the samples were sent to the Customs House at Chennai, along with the seal of Court; that on 12.03.2010, a report was received, confirming that the samples sent for examination answers positive for Ganja; that the remaining samples and the contraband were produced on 17.03.2010 before the Special Court, Pudukkottai, for safe custody; that subsequently, as per the orders of the learned Special Judge, Pudukkottai, the same were submitted to the Department's Godown at Trichy for safe custody; that since the address given by Muthuraman [A-1] in his statement was wrong and further, since the name of Ravichandran [A-3] was found in the register maintained by Krishna Bhavan Udupi Lodge at Tuni Village at Andhra Pradesh and as per the photocopy of the RC Book taken from the vehicle in question, the owner of the vehicle was Ravichandran [A-3], Muthuraman [A-1] had to be examined once again in the prison; that after obtaining permission from the learned Special Judge, Pudukkottai, one more statement was obtained from Muthuraman [A-1] at the Central Prison, Trichy, in the presence of the Prison officials; that the Motor Vehicles Inspector, Thirumangalam, Madurai, was contacted for confirmation that the vehicle belonged to Ravichandran [A-3]; that in order to examine Ravichandran [A-3] under the Act, summons was sent to him on 11.02.2010; that he did not appear before the Customs Officers, Trichy; that on 25.02.2010, again, summons was sent under the Act requiring him to come to Trichy for enquiry; that still, he did not turn up for enquiry; that on 08.03.2010, once again, summons was prepared by the Customs Supervisor, Madurai and the same was affixed at the residence of Ravichandran [A-3] and a mahazar was prepared to that effect, which, Ravichandran [A-3] did not appear before the officers of the Customs Department at Trichy.



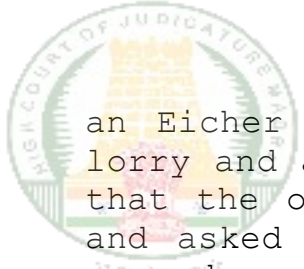
9. Jebaraj Rajkumar [PW-9] has filed the complaint on 06.07.2010 against Muthuraman [A1], Ramesh [A-2] and Ravichandran [A-3] [absconding] for the offences under Section 8 (c) r/w 20, 28 and 29 of the Act before the Special Court, Pudukottai and the case was taken on file as C.C.No.75 of 2010. Surprisingly, the complaint has been marked as EX-P50. It is not known how this practice has crept into the system. Even Magistrates, who are dealing with complaints under Section 138 of the Negotiable Instruments Act, 1881, do not mark the complaint. But, strangely, the complaint has been marked as an Exhibit before the Special Court. Final reports by police and complaints by Specialized Agencies are not substantive piece of evidence to be marked as Exhibits. This Court hopes that this practice is discontinued in future.

10. In the cross-examination of Jebaraj Rajkumar [PW-9], he was asked in detail about the information that was received by him and he has stated that the informant met him and gave written information and that the written information has been kept in a sealed cover and is in the custody of the superior officers. The information report (Ex.P.15) is the extract of the information given by the informant. Section 68 of the Act bars an officer from disclosing the details of the informant. This protection is essential as any disclosure will put the informant in peril. He also admitted that the names of the accused do not find place in the information report (Ex.P.15). On a perusal of the information report Ex.P.15, it is seen that the information is specific with regard to the vehicle, contraband and route. Column No.3 reads as follows:

"Name of the suspects with : Some persons from in or
parentage and address around Usilampatti area
of Madurai District."

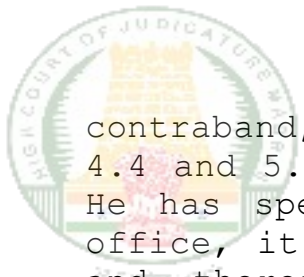
11. Thus, from the above, it is clear that the officers did not have prior information about the names of the persons who are involved in the transport of the contraband from Andhra Pradesh. He was further cross-examined on the manner in which the samples were drawn and it was suggested to him that he had violated the guidelines issued under Standing Order No.1/89 which he denied. The prosecution filed a petition under Section 311 of the Code of Criminal Procedure and recalled Jebaraj Rajkumar (P.W.9) on 29.05.2012 and marked through him the Standing Order No.1/89 as Ex.P.51. Based on that, further cross-examination was done by the accused suggesting that he had not adhered to the guidelines adumbrated in the Standing Order for drawal of samples, which suggestion, he denied.

12. Ramalingam (P.W.8), one of the independent witnesses, in his evidence, has stated that he runs a puncture shop near the Highway; that sometime in January, 2010, on the Bhogi Festival day, Customs Officers told him that they have received information about transport of Ganja and asked him to stand as witness; that he had agreed and while they were waiting, they saw



an Eicher Mini lorry; that the officers stopped the Eicher mini lorry and asked the driver about it, for which, the driver denied; that the officers told the driver that there is a smell of Ganja and asked him to open the rear door; that the driver opened the rear door; that beneath the floor, he saw plastic covers; that on checking one packet, it was found to be Ganja; that the officers prepared a report there; that since people gathered, the officers decided to take the Eicher mini lorry and the two occupants to the Customs Office; that at the Customs Office, the packets were removed and checked and that the samples were drawn and that he had signed thereon and also in the gunny bags; that a report was prepared and read to him; that one John was also with him; that both of them signed in the report; that the two reports were marked as Exs.P.2 and P.3; that he has signed in the documents Ex.P.4 series seized from the Eicher mini lorry; that in the cross-examination, he was asked about his puncture business, for which, he stated that he is an employee and the name of his shop is 'MRS Tyres'; that he reported to duty at 09.00 a.m., and stayed till 09.10 p.m. To a specific question as to whether Customs Officers had met him prior to the incident, he stated that none had met him. He was further cross-examined as to how he came to the Court for giving evidence, for which, he stated that he received summons and came to the Court at 11 'o' Clock on the previous hearing date and he was told that the matter was adjourned and, therefore, he left. In the cross-examination, he has stated that his shop is about 1^{1/2} Kilometres from the Toll Gate II, where the Eicher Mini lorry was intercepted. It was ultimately suggested to him that he was not a witness to the seizure and that he was called upon by the officers to sign the papers subsequently, which suggestion, he denied.

13. Sivasambamoorthy (P.W.2), Intelligence Officer, Customs, in his evidence has stated that he was requested by Jebaraj Rajkumar (P.W.9) to come to the Office on 13.01.2010 evening for the purpose of assisting him in weighing the contraband and drawing samples therefrom. His evidence with regard to the drawal of samples, weighment of contraband and seizure of the contraband is in line with the evidence of Jebaraj Rajkumar (P.W.9), through him, Eicher mini lorry was marked as M.O.1; the main contraband weighing 492.700 Kilograms of Ganja in 19 gunny bags were marked as M.O.2 series; the packing materials that were used for packing the Ganja were put into three gunny bags and those gunny bags were marked as M.O.3 series; the 12 samples that were drawn from the lots including the remnant samples received from the Laboratory were marked as M.O.4 series. In his evidence, he has stated that in all the Material Objects, Jebaraj Rajkumar (P.W.9), two witnesses and the two accused have signed. In the cross-examination, he was specifically questioned about the weighing machine used by him, for which, he stated that he had used the scale weighing machine that was available in his office. When he was specifically questioned as to how he had weighed the

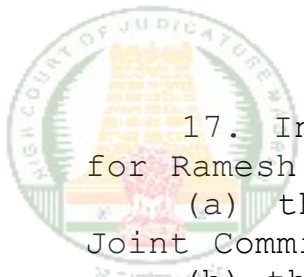


contraband, he has stated that he grouped the packets into lots of 4.4 and 5.5 and weighed the lots and added the individual weight. He has specifically stated that in the weighing machine in his office, it is not possible to keep the entire contraband and weigh and, therefore, he had to adopt the method of weighing the packets in lots and adding the weights. It was suggested to him that he should have taken two samples from each small packet and that he should take 426 samples and that he should not have adopted the lot method for drawing samples, which suggestion, he denied. He was asked as to whether he signed on the seized contraband, for which, he stated that he did not sign.

14. Rengadurai (P.W.3), Superintendent of Customs, Trichy, in his evidence, has stated that on 13.01.2010, he along with Jebaraj Rajkumar (P.W.9) and other officers maintained surveillance near the Toll Plaza II at Thirumandhurai and intercepted the Eicher mini lorry bearing Registration No.TN-31-F-8581, which was driven by Ramesh (A-2); that when the two persons in the Eicher mini lorry were questioned, they initially denied and on persistent questioning saying that there is a smell of Ganja, they admitted and showed the secret cavity beneath the floor on the rear side; that a detention mahazar (Ex.P.3) was prepared and since the place was not congenial for conducting seizure, the Eicher mini lorry, along with the accused and independent witnesses, was taken to the Customs Office. In the cross-examination, it was suggested to him that he had violated the provisions of Section 50 of the Act, by not giving the option to the accused to be searched before a Gazetted Officer or Magistrate, which suggestion, he denied.

15. Balasubramanian (P.W.4) Inspector of Customs, Trichy, recorded the statement of Muthuraman (A-1) under Section 67 of the Act and the said statement was marked as Ex.P.5.

16. Ravi Shankar Sharma (P.W.5), Assistant Chemical Engineer, Customs House, Chennai, in his evidence, has stated that he received a requisition dated 20.01.2010 from the Special Court, Pudukkottai (Ex.P.7) along with six samples marked as L1S1, L2S1, L3S1, L4S1, L5S1 and L6S1; that he weighed the samples and conducted various tests and that each of the six samples in the form of heterogeneous mixture of moist plant parts such as stalks, flowering tops, seeds etc. Each sample is Cannabis (Ganja) and is covered under the Act; and that the report given by him has been marked as Ex.P.6. He has further stated that he sent back the remnant samples along with test report through Sivasambamoorthy (P.W.2), Inspector of Customs to the Court with a covering letter Ex.P.9. In the cross-examination, he was asked as to how long he had taken to do the analysis, for which, he stated that he took 3 to 4 days. He was further asked as to whether he has mentioned in his report that he had taken 4 days, for which, he has also stated that he has not mentioned the tests conducted by him in his report. Apart from this, he was not asked any other questions.



17. In the light of the above evidence, the learned counsel for Ramesh (A-2) formulated the following points:

(a) that the secret information does not bear the seal of Joint Commissioner;

(b) that the mahazar witness Ramalingam (P.W.8) is not a local person and his shop is far away from the Toll Plaza in question and that the officer should have called someone from the Toll Plaza;

(c) that the Eicher mini lorry ought not to have been taken to the Customs Office and the seizure should have been done at the place of detention itself;

(d) that there is no document, like driving licence, to show that Ramesh (A-2) was the driver of the vehicle and his driving licence has also been not recovered even in his house search;

(e) that the confession statement (Ex.P.16) has been obtained under coercion and threat. In the confession statement, it is stated that Muthuraman (A-1) and Ramesh (A-2) had stayed in Udupi Lodge in Tuni, Andhra Pradesh and that the room was booked in the name of Muthuraman (A-1), whereas the lodge record -Ex.P.45 shows that the room was booked in the name of Ravichandran (A.3), therefore, no reliance can be placed on the confession statement;

(f) the name of Ramesh (A-2) does not find place in the Information Report (Ex.P.15);

(g) that there is no record to show what the officers were doing from 08.01.2010 to 12.01.2010;

(h) that the weighing and sealing procedure was not done in accordance with Standing Order No.1/89 (Ex.P.51);

(i) that there was violation of Section 50 of the Act, inasmuch as the option was not given before his person was searched; and

(j) that Section 67 statement (Ex.P.16) has been recorded even without service of summons on Ramesh (A-2).

18. In support of his contentions, the learned counsel placed strong reliance on the following judgments:

(i) State of Rajasthan v. Parmanand [2014(2) SCC (Cri) 563;

(ii) Gurbax Singh v. State of Haryana [2001(3) SCC 28];

(iii) Katturaja v. The Inspector of Police, N.I.B.C.I.D. Police [2015(1) L.W. (Crl.) 672];

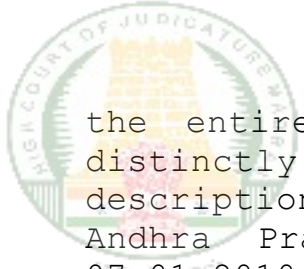
(iv) Bidyadhar Dolai v. State [1993 Cr1.L.J.260]; and

(v) Narcotics Control Bureau v. Kishan Lal [AIR 1991 SC 558].

19. Per contra, the learned Special Public Prosecutor for Customs refuted the contentions.

20. This Court gave its anxious consideration to the rival submissions.

21. It is true that the information report-Ex.P.15 does not contain the name of any of the accused. That does not mean that



the entire case of the prosecution is false. The information distinctly relates to the nature of the contraband and the description of the vehicle in which it was being brought from Andhra Pradesh to Madurai. The information was received on 07.01.2010 and the Joint Commissioner has affixed his initials on the very same day. The learned counsel submitted that this information report (Ex.P.15) should have been submitted to the Tapal Section of the office and the seal of the Joint Commissioner should have been obtained. The Tapal Section in a Government Office is required to receive letters and communications coming from outside. For communicating intelligence, the Tapal Section cannot be used. The act of the Superintendent handing over the secret information and the report Ex.P.15 based upon the secret information directly to the Superior Officer, namely the Joint Commissioner of Customs, cannot be faulted. The contention that there is no record to show what the officers were doing from 08.01.2010 to 12.01.2010 deserves to be stated only to be rejected, because, it is not necessary to narrate the steps taken by the officers to keep track of the movement of the lorry from Andhra Pradesh, as that would expose the intelligence gathering machinery.

22. In this case, the interception was done by Jebaraj Rajkumar (P.W.9), Superintendent of Customs, who is in the rank of a Gazetted Officer. He has powers under Sections 41 and 43 of the Act to effect search and seizure. That apart, the contraband was seized from a lorry while in transit in a public place. Section 43 of the Act which relates to power of seizure and arrest in public place, is not controlled by the rigours of Section 42 of the Act.

23. As regards the contention that the entire seizure should have been effected in the National Highway immediately after the lorry was intercepted, this Court is of the view that such a course would have resulted in curious onlookers gathering around the lorry and disturbing the functioning of the officers. There is also possibility of persons known to the accused gathering there and helping them to escape.

24. A similar issue came up for consideration before the Supreme Court in **M.Prabhulal v. Assistant Director, D.R.I. [AIR 2003 SC 4311]**, wherein, paragraph No.7 is the complete answer to the submission, which reads thus:

"The search and seizure was also faulted for the reason of the same having taken place not on spot out in the customs office. The reason why it had taken place in the customs office has been noticed earlier. In this regard, reference may also be made to Khet Singh v. Union of India, [2002] 4 SCC 380, a case under NDPS Act where decision of the Constitution Bench in Pooran Mal v.



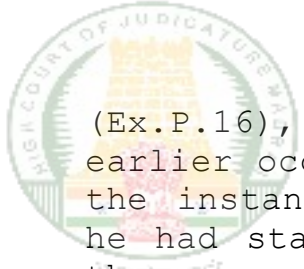
Director of Inspection (investigation), New Delhi & Ors., [1974] 1 SCC 345 was noticed for the proposition that courts in India and England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. The Court declined in that case to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. Further, in the said case though the mahazar was not prepared at the spot but at the office of the Customs Department, it was found that the accused were very much present throughout and there was no allegation or suggestion that the contraband article was, in any way, meddled with by the officers. The position in the present case is also same. Here too, no allegation about meddling with the contraband has been made, in our view, on the facts of the case, there is no illegality in the seizure of the contraband either on account of non-examination of the independent witnesses or by effecting the seizure at the office of the Customs Department, the appellants having failed to establish that any prejudice was caused to them."

25. The contention that the officer should not have taken Ramalingam (P.W.8) as a witness and should have taken someone from the Toll Plaza may not merit acceptance, because it is common knowledge that public avoid standing as witness in such operations for various reasons. The defence was not able to discredit the evidence of Ramalingam (P.W.8) by showing that he was a stock witness for the Customs Department.

26. In **State of U.P. v. Zakauallah [1998(1) SCC 557]**, the Supreme Court has stated that a person who had earlier been a witness in similar cases cannot be said to be a non-independent witness. Acquaintance with the police by itself will not destroy a man's independent outlook, as long as he is not dependent on the police for his living or liberty.

27. In this case, there is absolutely no material to show that Ramalingam (P.W.8) had stood as a witness earlier.

28. As regards the submission relating to the recovery of driving licence, the fact that the officers were not able to recover the driving licence of Ramesh (A-2) will not lead to the inference that he was not on the wheels at the relevant point of time in the teeth of the evidence of Rengadurai (P.W.3) and Jebaraj Rajkumar (P.W.9). Rengadurai (P.W.3), in his evidence, has clearly stated that he, along with other Officers including Jebaraj Rajkumar (P.W.9), intercepted the Eicher mini lorry and Ramesh (A-2), who was on the wheels and when he was questioned, he disclosed his name as 'Ramesh'. Even in the statement of Ramesh



(Ex.P.16), he had stated that he had driven the lorry on an earlier occasion also and had brought Ganja from Andhra Pradesh at the instance of Ravichandran (A-3). Of course, in the statement, he had stated that the room in Udupi Lodge at Tuni was taken in the name of Muthuraman (A-1). That by itself cannot cause any doubt on the veracity of other information that have been provided by him in the statement. For example, only after the statements were recorded, the officers knew about the character called 'Ravichandran' and the fact that the accused stayed in Udupi lodge in Tuni at Andhra Pradesh. When the officers verified with the lodge, they found that the room was booked in the name of Ravichandran (A-3). In the statement, Ramesh (A-2) has stated that they were sent by Ravichandran (A-3) to Andhra Pradesh, where they met Apparao and collected the consignment at Andhra Pradesh to Orissa border on 12.01.2010. It may be necessary to state here that at the time when the accused were produced before the Magistrate for remand, they did not complain of any ill treatment, as could be seen from the endorsement of the Magistrate in the remand application (Ex.P.17). In the cross-examination of the prosecution witnesses, the accused has not suggested any previous motive for the Customs Officers to foist a case with such a huge quantity of Ganja, that too, concealed in a special cavity beneath the floor of the Eicher Mini Lorry. The lorry documents show that the lorry is in the name of Ravichandran (A-3). During the pendency of the appeal, Ravichandran (A-3) has been arrested by the authorities and he is facing prosecution in the split up case. From the time of the interception of the lorry till Ramesh (A-2) was produced before the Magistrate, he was with the Customs Officials. Hence, there is no necessity to give summons separately under Section 67 of the Act before recording his statement.

29. Coming to the weighing and sealing procedure, the violation, if any, of the procedures in Standing Order No.1/89 cannot by itself vitiate the search and seizure. Such Standing Orders are intended to be a source of guidance for the officers and cannot be elevated to the status of a sacrosanct document. After all, the entire sampling operations were done in the presence of the accused and the independent witnesses. It is true that Paragraph No.2.2 of Standing Order says that the seizure should be made at the spot of recovery. However, as stated above, in **Prabhulal** (*supra*), taking of the lorry from the Highways to the Customs Department along with the accused and witnesses for good reasons cannot vitiate the seizure. The learned counsel contended that Paragraph No.2.3 of the Standing Order states that 24 Grams should be drawn as sample.

30. Per contra, the learned Special Public Prosecutor for Customs submitted that Paragraph 2.5 of the Standing Order permits



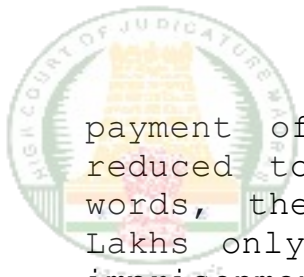
31. As stated above, in the opinion of this Court, the Standing Order No.1/89 is in the nature of providing guidance and violations with regard to the methodology of drawal of samples cannot make the seizure suspect.

32. In this case, the Eicher mini lorry was detained on 13.01.2010 around 02.15 p.m., and the detention mahazar was completed by 05.30 p.m. Thereafter, the Eicher mini lorry, the accused and the independent witnesses were taken to the Customs Office, where weighing, drawal of samples and preparation of mahazar-Ex.P.2 were completed around 11.30 p.m., on 13.01.2010. The statements of the accused were recorded under Section 67 of the Act and thereafter, they were placed under arrest vide arrest memo Ex.P.18 at 15.30 hours on 14.01.2010. The accused, the Eicher mini lorry, the seized contraband, packing materials and the samples were produced before the learned Judicial Magistrate No.I, Trichirappalli, at 06.00 p.m. on 14.01.2010. The Magistrate has checked the contraband and has returned the same to the Customs Officials for want of space in the Court with a further direction to produce the same before the Special Court, Pudukkottai. Records show that the contraband was kept in the Customs Godown and it was produced before the Special Court on 20.01.2010 after Pongal holidays and after ensuring that the records from the Court of the learned Judicial Magistrate No.1, Trichirappalli had reached the Special Court, Pudukkottai.

33. Coming to the last submission with regard to the violation of Section 50 of the Act, in the opinion of this Court, the provisions of Section 50 will not apply, because the search and seizure has been effected from the lorry and not after person search.

34. This issue has been discussed in detail by this Court in **Shri Krishnan Sridaran Rajendran v. State rep. by The Intelligence Officer, Chennai-17 [2018(1) LW (Crl.)119]**, wherein, this Court, after placing reliance on the Constitution Bench Judgment of the Supreme Court in **State of Punjab vs. Baldev Singh [1999(6) SCC 172]**, has held that the provisions of Section 50 will apply only if the contraband is recovered from search of a person.

35. To conclude, the prosecution has proved their case via cogent evidences beyond any reasonable doubt. However, the conviction and sentence under Section 28 of the NDPS Act cannot be sustained, because, this is not a case of attempt, but, a case of completed offence. Hence, the conviction and sentence under Section 28 of the Act is set aside. The prosecution has proved the charge under Section 8(c) r/w 20(b)(ii)(C) and 29 of the Act and the conviction and sentence imposed by the Trial Court for these charges is confirmed. However, the trial Court has awarded default sentence of one year rigorous imprisonment each for non-



payment of each fine amount. Default sentence of one year is reduced to 15 days for default of each fine amount. In other words, the total fine amount now is Rs.2,00,000/- (Rupees Two Lakhs only), but the total default sentence is 30 days rigorous imprisonment.

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36. With the above modification, the Criminal Appeal is partly allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Court
Cum Special Court for Narcotic Drugs
and Psychotropic Substances Act,
Pudukkottai.
2. The Superintendent of Customs,
Central Intelligence Unit,
Trichy.
3. The Special Public Prosecutor for Customs Cases,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent of Central Prison, Madurai.

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate Sr.No.58496

NB/SML/SM

VB/SKN/RSK/SAR2/07/06/2018/13P/6C

JUDGMENT MADE IN
Cr1.A.[MD]No.139 of 2014
28.03.2018