



BAIL SLIP

(A1) Sundarapandian, S/o. Veeranathevar, male, 30/2009,
(A2) Murugan, S/o. Mani, Male 42 years Were released on bail
vide order of this Court dated 02.02.2010 made in MP(MD).1 of 2009
in CRL A(MD).432 of 2009.

(A3) Ramaraj, S/o. Chinna Karuppa Thevar, Male 51 years was
released on bail, vide order of this court, dated 07.01.2010 made in
MP(MD).1/2009 in CRL A(MD)439 OF 2009.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.04.2019
Date of Judgment	29.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A.(MD)No.432 of 2009

and

Crl.A(MD)No.439 of 2009

1.Crl.A(MD)No.432 of 2009:-

1.Sundarapandian

2.Murugan : Appellants/A1 and A2

Vs.

State rep. by

Inspector of Police,

NIBCID,

Madurai.

(Crime No.116 of 2001) : Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the
Criminal Procedure Code against the judgment made in CC No.221 of
2003, dated 04.12.2009 on the file of the Special District and
Sessions Judge for NDPS Act Cases, Madurai.

For Appellant : Mr.B.Chandramohan

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

1.Crl.A(MD)No.439 of 2009:-

Ramaraj : Appellant/A3

Vs.



State rep. by
Inspector of Police,
NIBCID, Madurai.
(Crime No.116 of 2001)

: Respondent/Complainant

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Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in CC No.221 of 2003, dated 04.12.2009 on the file of the Special District and Sessions Judge for NDPS Act Cases, Madurai.

For Appellant : Mr.N.Ravi Shankar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

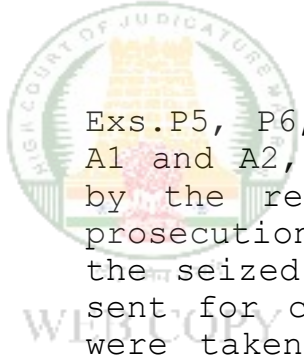
COMMON JUDGMENT

These Criminal Appeals are directed against the judgment made in CC No.221 of 2003, dated 04.12.2009 on the file of the Special District and Sessions Judge for NDPS Act cases, Madurai.

2.The case of the prosecution is that on 28.09.2001 at 21.15 when PW7 and his party checked the Tax Car TN-63-5250, which was driven by the Taxi Driver (A3) and in the said Car, two other persons (A1 and A2) said to have travelled on hire, in which they alleged to have carried two bags of Ganja weighing 15 kgs each. The respondent police has filed a final report against the accused examining the witnesses.

3.In the trial court, 9 witnesses were examined and 18 Exhibits and 4 material objects were marked. When the accused was questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted A1 and A2 for the offence under Section 8(c) r/w 20(b)(1) of NDPS Act and sentenced of them they shall undergo 3 years RI and to pay a fine of Rs.15,000/-, in default to undergo 2 weeks simple imprisonment and also convicted A3 and sentenced him to undergo rigorous imprisonment for three years and also to pay fine of Rs.15,000/- in default to undergo simple imprisonment for two weeks. Aggrieved by the judgment passed by the trial court, the appellants/A1 to A3 are before this court.

4.The learned counsel appearing for the appellants submitted that the prosecution has miserably failed to establish the case beyond all reasonable doubt and the prosecution has failed to produce the original information (Ex.P12) and produced only the carbon copy, which are in-admissible in evidence in absence of proof and Ex.P12 is bad in law and the prosecution case built on Ex.P12 is vitiated and the prosecution has not proved the place of occurrence through witnesses beyond the reasonable doubt and according to the prosecution, Ex.P13 (FIR) was registered only after completing



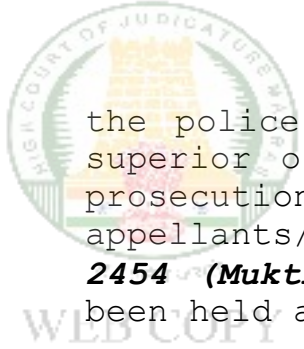
Exs.P5, P6, P9 and P10, it was noted ranking of the accused likely A1 and A2, which shows that all the exhibits in this case prepared by the respondent as their own and wish and according to the prosecution, totally four sample pockets had been taken away from the seized contraband and among them, two sample pockets had been sent for chemical examination and other two sample pockets, which were taken for standard samples was not produced at the time of trial itself, doubted the seizure of the contraband and the samples taken in front of the witnesses and in this case, PW4, PW6 and PW8 were only the independent witnesses and they have not supported to the prosecution and the trial court has failed to consider the non-compliance of the provisions of 42, 52, 55 and 57 of NDPS Act and in this case, the respondent police has not taken any steps to find out where the alleged contraband was purchased. In view of the above circumstances, the judgment of the trial court has to be set aside and the criminal appeals are to be allowed.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the appellants and passed proper sentence, which do not require any interference by this court and the accused are not entitled for acquittal and prays that the criminal appeals have to be dismissed.

6.Heard both sides and perused the materials available on record.

7.The main contention raised on the side of the appellants in both the cases that the provisions of Section 42, 52, 55 and 57 of NDPS Act were not complied with and according to the prosecution version, totally four sample pockets were taken away from the seized contrabands and among them, two sample pockets have been sent for chemical examination and other two sample pockets which were taken for standard samples, but they were not produced at the time of trial itself, which doubted the seizure of the contraband and samples taken in front of witnesses and as per the prosecution version, MO1 and MO2 were taken from different packages and from different persons, but the appellants name was mentioned jointly and also one another police official, who was not examined investigate the case and one DSP Simson Pratap Singh's was also found in those material objects, which show those material objects were created to strengthen the prosecution case and the respondent police has not taken any steps to find out whether the alleged contrabands were purchased and further there were lot of contradictions in the evidence of the prosecution witnesses and prays that the criminal appeals are to be allowed.

8.The learned counsel appearing for the appellants/ accused further submitted that section 42 of NDPS Act was not complied with and no document was filed to prove that the information received by



the police official was informed to his superior official and the superior official was not examined and hence, it is fatal to the prosecution. For that, the learned counsel appearing for the appellants/accused submitted the decision reported in **2008 Cr1.LJ 2454 (Mukthat Singh Vs. State of Haryana)**. In that case, it has been held as follows:-

"A NDPS Act (61 of 1965) Sec.42 Possession of contraband - Non forwarding of written information of offence to superior officials - No cogent reasons assigned by prosecution for not doing so - Mandatory Provision of Sec.42 can be said to have been violated - Accused entitled for acquittal."

9.As per the prosecution case, PW7 received information from the informant. PW7 deposed that after he received the information from the informant, he reduced it into writing and sent the copy of the information to his superior officials.

10.In this case, the information recorded by PW7 has been marked as Ex.P12. On perusal of Ex.P12, it reveals that PW7 reduced into writing the information received by him from the informant and informed the above to his superior official.

11.In this case, the place of occurrence is opposite to Guru Theatre. The place of occurrence is a public place. Hence, if Section 42 of NDPS Act not complied with, it will not affect the case of the prosecution. Since, the place of occurrence is a public place. Further, in Ex.P12 also, PW7 intimated the information to his superior official. Hence, the argument put forth on the side of the appellants/accused stating that section 42 of NDPS Act was not complied with, is not at all acceptable.

12.The next contention raised on the side of the appellants/accused is that the place of occurrence is a busy area, but PW7 failed to examine the independent witness and hence, the non examination of independent witness is fatal to the prosecution. For that, the learned counsel appearing for the appellants submitted the ruling reported in 2007(1)SCC (Cr1.) 744 (Ritesh Chakaravarthi Vs. State of MP), 2008(1) TNLR 461 (Criminal) (Rajendran Vs. State) and 2002 Criminal Law Journal 4816 (Sathan and another Vs. State of Rajasthan).

13.In this case, PW8 was an independent person. But he turned hostile and did not support the case of the prosecution. Already, PW8 an independent witness was examined. Hence, the argument put forth on the side of the appellants/accused stating that the non examination of the independent person nearby vicinity of the place of occurrence is fatal to the prosecution is not at all acceptable.



14. The next contention raised on the side of the appellants/accused is that section 50(1) of NDPS Act was not complied with. For that, the learned counsel appearing for the appellants/accused submitted a ruling reported in **1999 SCC (Cr1) 1051 (Pon Adithan Vs. Deputy Narcotics Control Bureau, Madras.)** In that case, it has been held as follows:-

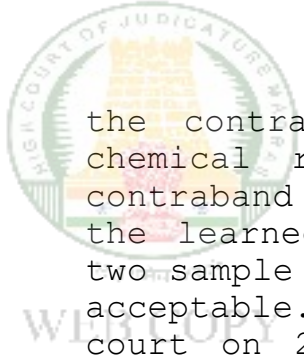
"Section 50(1) -Requirement of informing the accused about his right to be searched in the presence of a gazetted officer or a Magistrate - Absence of independent evidence or any other supporting documentary evidence - Held in the circumstances of the case, Oral evidence of Intelligence Officer, who conducted search sufficient for establishing compliance with requirement of the section - Moreover, there was the confessional statement of the accused corroborating the evidence of the searching officer - subsequent involvement of the said witness is an offence under the Act is of no consequence.

We, therefore, cannot agree with the submission of Mr.Lalit that this court in that case has laid down as a proposition of Law that in the absence of independent evidence or any other supporting documentary evidence, oral evidence of a witness conducting the search cannot be regarded as sufficient for establishing compliance with the requirement of Section 50(1)."

15. PW7 deposed that after searching the Car in which A1 to A3 travelled, he asked the appellants/accused whether it is necessary to search them before the Gazetted Officer or before the Judicial Magistrate, for that, they replied that it is not for them to search before the Gazetted Officer or before the Judicial Magistrate and gave consent letters. The consent letters given by the accused were marked as Exs.P4 to P6. Further, PW7 and his parties searched the Car and not the accused. But PW7 complied with the provisions of 50 (1) of NDPS Act. Hence, the procedure contemplated under Section 50 (1) of NDPS Act has been complied with.

16. The learned counsel appearing for the appellants/accused further argued that as per the prosecution case, totally four pockets have been taken away from the seized contrabands and among them, two sample pockets were sent for chemical examination and other two sample pockets, which were taken for standard samples was not produced at the time of trial itself, which doubted the seizure of the contrabands and samples taken in front of witnesses.

17. In this case, PW7 deposed that after securing the accused, <https://hse.courts.gov.in/hse/ncs> contraband, he took sample each from two bags and the remaining Ganja was produced before the court as per Ex.P16. PW2 the Head Clerk of the Magistrate Court deposed that after receipt of



the contraband, then he sent it for analysis and received the chemical report. PW1 the Chemical Analysis deposed that the contraband is Ganja. Hence, the argument put forth on the side of the learned counsel appearing for the appellants/accused that the two sample pockets were not produced before the court, is not at all acceptable. It is seen that the contraband was received by the trial court on 29.09.2001 and it was sent for analysis on 03.10.2001. Hence, there is no delay in producing the contraband before the court and sending it for analysis.

18. In this case, in the Attachi, one DSP Simson Pratap Singh was signed and hence, it does not mean that no material objects were found in the place of occurrence. Further, in the attachi, the accused and the witnesses were signed. The material objects received in this case is Ganja. Hence, it is possible for reduction in the weight size and it became dry. Therefore, the reduction in the sample sent for analysis will not affect the case of the prosecution. The provisions of 57 of NDPS Act was properly complied with.

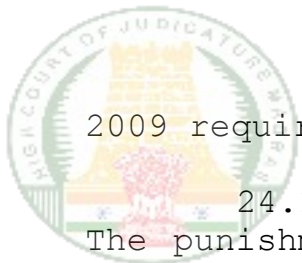
19. The learned counsel appearing for the appellant/A3 in CrI.A(MD)No.439 of 2009 submitted that there was no connection between A3 and the occurrence and A3 was called by the police and asked him to stand as a witness, for that he refused and hence, false case was foisted against A3 and prays that A3 is entitled to acquittal.

20. In this case, A3 himself admitted that the Car belongs to him and his Car was used for the transportation of Ganja. Hence, it is the bounden duty of A3 to prove that without his knowledge, Ganja was transported in his case. No contra evidence was let in on the side of A3 to prove that Ganja was transported in his vehicle without his knowledge. Hence, the above argument put forth on the side of the appellant/A3 stating that A3 falsely implicated in this case is not at all acceptable.

21. It is seen from the records that a memo has been filed by the learned counsel appearing for the appellant/A3 in CrI.A(MD) No.439 of 2009 that A3 has expired on 30.09.2001 and a copy of the death certificate has also been produced to that effect. The memo, dated 08.03.2019 is recorded.

22. For all the reasons stated above, this court is of the considered view that the trial court after proper appreciation of materials available on record, had given a correct finding, which does not require any interference by this court.

23. It is represented by the learned counsel appearing for the appellants/A1 to A2 in 432 of 2009 that the appellants/A1 and A2 are the breadwinners of the family and hence, leniency may be shown to them. Considering the above fact, this court is of the view that the punishment imposed on the appellants/A1 and A2 in CrI.A(MD)No.432 of



2009 requires modification.

24. In the result, CrI.A(MD)No.432 of 2009 is **partly allowed**. The punishment imposed on the appellants/A1 and A2 for the offence under Section 8(c) r/w 20(b)(1) of NDPS Act is reduced to 2 years years RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellants/A1 and A2 shall be given set off under Section 428 of Cr.P.C. The appellants/A1 and A2, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

25. Recording the memo filed by the learned counsel appearing for the appellant/A3 in CrI.A(MD)No.439 of 2009, the criminal appeal filed against him is **dismissed as abated**.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Special District and Sessions Judge
for NDPS Act Cases,
Madurai.
2. The Superintendent, Central Prison, Madurai.
3. The Inspector of Police,
NIBCID, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Common Judgement made in
CrI.A. (MD) Nos.432 and 439 of 2009
29.07.2019

SGS (CO)

TR(07.11.2019) 7P 7C

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