



BAIL SLIP

- 1.Muniyandi @ Ettu Idly Muniyandi-A2
- 2.Arunkumar, S/o.Murugan-A3
- 3.Lakshmanan, S/o.Ammavasai-A1
- 4.Murugan, S/o.Nataraj-A4

have been released on bail as per the order of this court made in CRL.MP(MD).No.2441 of 2016 in CRL.A(MD).No.33 of 2016 dated 19.09.2016 and CRL.MP(MD).No.585,625 of 2017 in Crl.A.(MD).No.33 of 2016, dated 24.02.2017 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2021

Pronounced on : 23.08.2021

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.33 of 2016

- 1.Lakshmanan, S/o.Ammavasai
- 2.Muniyandi @ Ettu Idly Muniyandi
- 3.Arunkumar, S/o.Murugan
- 4.Murugan, S/o.Nataraj ... Appellants / Accused Nos.1 to 4

versus

State Represented by
The Inspector of Police,
Kambam North Police Station,
Theni District.

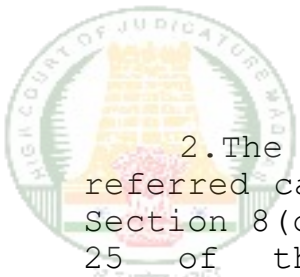
... Respondent /Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 14.12.2015, passed in C.C.No.200 of 2014, by the learned Principal Special Judge for NDPS Act Cases, Madurai.

For Appellant Nos.1 to 3	: Mr.R.Anand for Mr.B.Pandiarajan
For Appellant No.4	: Mr.T.Amjadkhan
For Respondent	: Mr.M.Muthumanikkam Government Advocate (Crl. Side)

J U D G M E N T

This appeal is directed against the conviction and sentence dated 14.12.2015, made in C.C.No.200 of 2014, on the file of the learned Additional Sessions Judge, Principal Special Court for NDPS Act cases, Madurai.



2.The appellants 1 to 4 are arrayed as A1 to A4 in the above referred case. They stood charged for the offence punishable under Section 8(c) r/w. Section 20(b)(ii)(C) and Section 8(c) r/w. Section 25 of the Narcotic Drugs and Psychotropic Substances Act [hereinafter referred to as 'the NDPS Act']. After full-fledged trial, the learned trial Judge found the appellants/accused guilty under Section 8(c) r/w. Section 20(b)(ii)(C) and Section 8(c) r/w. Section 25 of the NDPS Act. Ultimately, all the accused were convicted and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- each, in default, to undergo simple imprisonment for one year, for the offence under Section 8(c) r/w. Section 20(b)(ii)(C) of the NDPS Act. Further, they were convicted and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- each, in default, to undergo simple imprisonment for one year for the offence under Section 8(c) r/w. Section 25 of the NDPS Act.

3.Aggrieved over the said conviction and sentence, all the accused are before this Court with this Criminal Appeal.

4.The case of the prosecution is that P.W.1 - Jeganathan is the Special Sub-Inspector of Police in Cumbum North Police Station and P.W.7 - Kumaresan was working as Inspector of Police in the same Police Station. On 18.05.2014 around 08.00 a.m., while P.W.7 was in the Police Station, an Informant appeared before him and informed about the transportation of Ganja. After getting the said information, P.W.7 recorded the same in the General Diary and through one Chandran, Head Constable, he informed the said information to the Deputy Superintendent of Police and obtained permission for conducting raid. On the same day, around 06.45 a.m., along with P.W.1 - Jeganathan and the Informant, P.W.7 reached Mandaiamman Kovil Water Tank in Cumbum City and around 07.00 a.m., when they were in the said area, a Car bearing Registration No.TN-59-AH-9394 came from east to west and the same was identified by the Informant. After identifying the Car, the Informant went away and thereafter, around 07.15 a.m., both P.W.7 and P.W.1 waylaid the said Car and while at the time of search, they found Accused Nos.1 to 3 are inside the Car. During enquiry, all the accused had given their respective addresses. On the same day, around 07.30 a.m., P.W.7 informed to A1 to A3 as there was a suspicion about transportation of Ganja in the said Car. In this regard, he informed the rights having by the accused to them that the search may be conducted in the presence of a Gazetted Officer or the learned Judicial Magistrate. In respect of the said information, all the accused replied to P.W.7 that they are not willing to go before any Officer. Further, they permitted P.W.7 for conducting search. The notice given by P.W.1 to the accused in respect of the rights having by them in terms of Section 50(1) of the NDPS Act, was reduced into writing, in which, the first accused has signed and the same was marked as Ex.P.1. Further, the permission given by the first



accused for doing search was also reduced into writing and the same was marked as Ex.P.2.

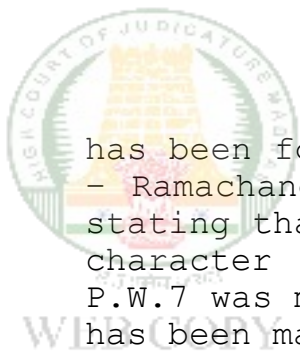
4.1. During the time of search, since Accused Nos.2 and 3 ran away from the place of occurrence, the signature of the respective accused was not obtained in Exs.P.1 and P.2. In continuation of investigation, on the same day around 07.45 a.m., the first accused Lakhmanan voluntarily gave the confession statement, wherein P.W.1 and one another Police person had signed as witnesses. During the time of search, the first accused had produced 50 Bags of Ganja, weighing 2 Kgs. each. P.W.7 after seeing the same, collected 50 Gms. each from 50 Pockets and after sealing the same, assigned with serial numbers as S.1 to S.50. The remaining contraband had been given with serial numbers as P.1 to P.50. After assigning the serial numbers as above, the same were recovered by P.W.7 under the Recovery Mahazar Ex.P.3. In the said document, since the Public refused to sign as witness, P.W.1 and one Chandran, the then Head Constable signed as witnesses. In the confession statement, the first accused had admitted the commission of offence as he and other accused had purchased the contraband from Andhra Pradesh and transported the same for earning much money.

4.2. After completing the above formalities, P.W.7 brought the accused into Police Station along with the contraband. On the same day around 12.30 p.m., he registered a case against all the accused in Crime No.169 of 2014 for the offences under Section 8(c) r/w. Section 20(b)(ii)(C) and Section 25 of the NDPS Act. The printed F.I.R. has been marked as Ex.P.14.

4.3. After registration of the case, in the presence of the same witnesses, the Car, in which, the accused had travelled along with the contraband, was recovered under the cover of Mahazar Ex.P.4. P.W.7 sent a requisition to P.W.6 - Selvi, Motor Vehicle Inspector, requesting to furnish the details of the owner of the Car, for which, P.W.6, the then Motor Vehicle Inspector, Uthamapalayam, furnished the particulars of the owner of the Car.

4.4. In continuation of investigation, on 20.05.2014 around 06.00 a.m., near Odaipatti Bus Stand in the presence of P.W.3 - Bharathan, Head Constable, P.W.7 arrested the second accused and recorded the confession statement given by him. After arresting the second accused, he was brought to the Police Station and thereafter, he was sent to judicial custody.

4.5. On 21.05.2014 P.W.7 produced the recovered contraband in the Court and thereafter, the same has been assigned with R.P.R.No.157 of 2014. Later, he submitted an application before the learned Sessions Judge, seeking to send the sample contraband to the chemical examination. The said application has been ordered by the learned Sessions Judge as prayed for. Thereafter, the contraband



has been forwarded to the Forensic Science Department, wherein P.W.2 - Ramachandran examined the same and issued a report under Ex.P.10 stating that the contraband recovered from the accused is having the character of cannabinoid (Ganja). The requisition letter given by P.W.7 was marked as Ex.P.8. Further, the letter issued by the Court has been marked as Ex.P.9.

4.6. In the meantime, after coming to know about the search made by Police persons to secure him, A3 in this case, on 21.05.2014 surrendered before the Judicial Magistrate Court No.II. Thereafter, on 02.06.2014 P.W.7 filed an application before the Court concerned, praying to give custody of the third accused. The application filed by P.W.7 was ordered. During the Police custody, A3 in this case, had given a confession statement in which, he has also admitted the offence.

4.7. On 17.06.2014 A4 in this case had surrendered before the Judicial Magistrate Court, Andipatti and thereafter, in view of the order passed by the learned Sessions Judge on the application filed by P.W.7, A4 was given Police custody, wherein, he had given a confession statement admitting the commission of offence. Thereafter, P.W.7 concluded the investigation and filed the final report against six accused.

5. Before the trial Court, due to the reason that the other two accused [A5 and A6] have not appeared, the learned trial Judge issued NBW and spilt up the case against these appellants. Further, upon the materials produced by the prosecuting agency, charge had been framed against the accused under Section 8(c) r/w. Section 20 (b)(ii)(C) and Section 8(c) r/w. Section 25 of the NDPS Act. All the accused denied the charge and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 7 witnesses have been examined as P.W.1 to P.W.7 and 14 documents were marked as Exs.P.1 to P.14, besides three material objects [M.O.1 to M.O.3].

(i) Out of the said witnesses, P.W.1 - Jeganathan, the then Special Sub-Inspector of Police, Cumbum North Police Station, speaks about the information received by P.W.7 and about the search conducted in the Car. According to him, the first accused in this case had given confession, wherein, he admitted the commission of offence. Thereafter, P.W.7 made search and recovered the contraband in his presence. Further, he has signed as a witness in the confession statement given by A1 and in the Seizure Mahazar prepared by P.W.7.

(ii) P.W.2 - Ramachandran was working as Scientific Assistant in Forensic Science Department, Madurai. He speaks about the receipt of sample contraband from the Court and about the examination made on the contraband. According to him, the recovered contraband are having the character of Cannabinoid [Ganja].



(iii) P.W.3 - Bharathan was working as Head Constable in the same Police Station. He claims that on 20.05.2014 near Odaipatti Bus Stand, P.W.7 secured the second accused and recorded his confession in his presence.

WEB COPY (iv) P.W.4 - Karthick, the then Village Administrative Officer gave evidence before the trial Court as the third accused in this case had given confession before P.W.7, in which, he signed as a witness.

(v) P.W.5 - Manimaran, the then Sub-Inspector of Police, Cumbum South Police Station speaks about the details of confession statement given by the fourth accused.

(vi) P.W.6 - Selvi, who was working Motor Vehicle Inspector, claims that on 19.05.2014, P.W.7 has given a request to furnish the details of the owner of the vehicle bearing Registration No.TN-59-AH-9394. Upon the request given by P.W.7, she gave particulars as requested by him.

(vii) P.W.7 - Kumaresan, the then Inspector of Police, Cumbum North Police Station, speaks about the receipt of information in respect of the alleged occurrence, arrest of the first accused, recovery of the contraband, other details of the investigation and about the filing of final report.

6.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. However, they did not choose to examine any witness or mark any document on their side.

7.Having considered all the materials placed, the learned Additional Sessions Judge, Principal Special Court for NDPS Act cases, Madurai, came to the conclusion that all the accused in this case found guilty under Section 8(c) r/w. Section 20(b)(ii)(C) and Section 8(c) r/w. Section 25 of the NDPS Act and accordingly, sentenced them as stated in Paragraph 2 of this judgment.

8.Aggrieved over the said conviction and sentence, the accused are before this Court with this Criminal Appeal.

9.I have heard Mr.R.Anand, learned counsel appearing for the appellants 1 to 3 and Mr.T.Amjadkhan, learned counsel appearing for the fourth appellant and Mr.M.Muthumanikkam, learned Government Advocate (Criminal side) appearing for the State and perused the materials available on record.

10.The learned counsel appearing for the appellants 1 to 3 contended that though the evidence given by P.W.1 and P.W.7 is in support of the case of prosecution, the said evidence reveal the



fact that after securing the first accused and before conducting the search, he was not informed about the right having by him under Section 50 of the NDPS Act. Mere passing of information is not enough to comply with the said requirement. The averments found in the F.I.R. are very clear that the first accused in this case has not provided with any opportunity to choose his choice in respect of the search, which would amount to violative of Section 50 of the NDPS Act and therefore, the appellants are entitled for acquittal.

11. In this regard, the learned counsel appearing for the appellants 1 to 3 relied on the judgment of our Hon'ble Apex Court in the case of **Arif Khan Vs. State of Uttarakhand** reported in **AIR 2018 SC 2123**, wherein it has been held as follows:-

''20. Their Lordships have held in *Vijaysinh Chandubha Jadeja* [*Vijaysinh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609 : (2011) 1 SCC (Cri) 497] that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the police officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorised officer to make the suspect aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a gazetted officer or a Magistrate. (See also *Ashok Kumar Sharma v. State of Rajasthan* [*Ashok Kumar Sharma v. State of Rajasthan*, (2013) 2 SCC 67 : (2013) 1 SCC (Cri) 829] and *Narcotics Control Bureau v. Sukh Dev Raj Sodhi* [*Narcotics Control Bureau v. Sukh Dev Raj Sodhi*, (2011) 6 SCC 392 : (2011) 2 SCC (Cri) 981].)''

12. Further, he relied on one another judgment of our Hon'ble Apex Court in the case of **Vijaysinh Chandubha Jadeja Vs. State of Gujarat** reported in **AIR 2011 SC 77**, wherein it has been held as follows:-

''29. we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of

<https://hcservices.ecourts.gov.in/hcservices/> to avoid harm to innocent persons and to



minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance.''

Therefore, on a conjoint reading of the judgments referred to by the learned counsel appearing for the appellants 1 to 3, it appears that the said provision is mandatory and requires strict compliance.

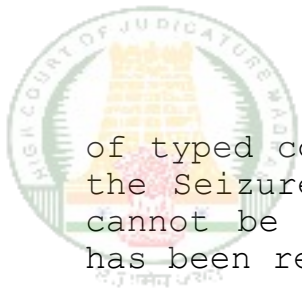
13.Now, applying the ratio laid down in the above referred judgments to the case on hand, in the F.I.R., which is the earliest document for this case, in respect of the information given to the accused in terms of Section 50 of the NDPS Act, the author of the said document has stated as follows:-

“ஆகவே உங்களை சோதனை செய்ய அருகிலுள்ள நீதித்துறை நடுவரிடமோ அல்லது அரசு பதிவு பெற்ற அலுவரிடமோ அழைத்து செல்லவா? என வினவிய போது நாங்கள் அங்கெல்லாம் செல்ல விரும்பவில்லை என சொன்னார்கள்.”

14.The said evidence is very clear that before making search, the first accused in this case, has properly informed about the right provided to him under Section 50 of the NDPS Act. In this occasion, it is necessary and useful to see the judgments of our Hon'ble Apex Court in **State of Himachal Pradesh Vs. Pawan Kumar** reported in **2005 (4) SCC 350** and **State of Haryana Vs. Ranbir Alias Rana** reported in **AIR 2006 SC 1796**, wherein it has been held that Section 50 of the NDPS Act would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag, article, vehicle or container, etc., which the accused at the relevant time was carrying.

15.In the said situation, it is not in dispute that in the instant case, during the time of occurrence, P.W.7 had not made any search on A1. When A1 was secured, P.W.7 made search only in the vehicle [Toyota Innova] and identified the contraband, weighing 100 Kilograms. Therefore, the submissions made by the learned counsel appearing for the appellants 1 to 3 with regard to violation of Section 50 of the NDPS Act, is not having much force.

16.The next submission of the learned counsel appearing for the appellants 1 to 3 is that, as per the case of prosecution, after securing the accused and recovering the contraband, P.W.7 prepared a Seizure Mahazar in the occurrence place itself. In such situation, it is not possible for him to prepare a Seizure Mahazar in the form



of typed copy. But, in this case, P.W.7 had admitted the fact that the Seizure Mahazar is in the form of typed copy and therefore, it cannot be held that the relevant contraband pertains to this case has been recovered as alleged by the prosecution.

17. Now, on considering the said submission with the nature of documents exhibited in this case before the trial Court, it appears that the Seizure Mahazar prepared for recovering the contraband was marked as Ex.P.3. Though the same appears to be a typed copy, only the relevant particulars, which are fulfilling the character of Seizure Mahazar, are all appears in the written form. Therefore, it cannot be said that Ex.P.3 Seizure Mahazar is a typed copy.

18. One another submission made by the learned counsel appearing for the appellants 1 to 3 is that, after recovering the contraband, the same has not been produced before the Court immediately and therefore, the same creates a suspicion whether the recovered contraband alone has been produced before the Court.

19. Now, on considering the said submission with the relevant records, it seems that after recovering the contraband, on 18.05.2014, the same has been produced before the Court on 21.05.2014. Therefore, the recovered contraband has been produced before the Court after lapse of two days. In this connection, it is necessary for the prosecution to explain under whose custody the property was available on the said two days. In this regard, P.W.7 has stated in his evidence as after making recovery, the contraband was kept in the Police Station till the same has been produced before the Court. Further, in respect of the custody, he has stated that there was an entry made in the Register maintained in the Police Station to show that the contraband was available in the Police Station from 18.05.2014 to 20.05.2014. Therefore, it cannot be held that the Investigation Officer is not having any account for the custody of the contraband, particularly, till the date on which, the contraband was produced before the Court.

20. One another aspect, the learned counsel appearing for the appellants 1 to 3 urged before this Court is that, after completing all the formalities, a detailed report has not been prepared by the Investigation Officer, which would amount to violative of Section 57 of the NDPS Act.

21. It is true that on going through the entire evidence of P.W.7, it appears that P.W.7 has not stated about the preparation of detailed report in respect of alleged occurrence. However, in the case of **Gurbax Singh Vs. State of Haryana** reported in **AIR 2001 SC 1002**, it was observed that provisions of Sections 52 and 57 of the NDPS Act are directory. Further, violation of these provisions would not *ipso facto* violate the trial or conviction. Therefore, it is not violative of Section 57 of the NDPS Act is not a



ground for disbelieving the prosecution case. Accordingly, in this area also, the submission made by the learned counsel appearing for the appellants 1 to 3 is not having much significance.

22.The learned counsel appearing for the appellants 1 to 3 further contended that in the present case, the informant himself investigated the case and filed the final report. The said procedure adopted by the Investigation Officer is against the settled principles of law and therefore, on that ground, the appeal is liable to be allowed. In this regard, he relied on the judgments of our Hon'ble Apex Court in **Mohan Lal vs. The State of Punjab** reported in **AIR 2018 SC 3853** and **Varinder Kumar Vs. State of Himachal Pradesh** reported in **2020 (3) SCC 321**.

23.It is a sorry state of affairs that in 2021 while at the time of arguing this case, the learned counsel appearing for the appellants 1 to 3 relied on the judgment, which was already overruled by our Hon'ble Apex Court in the case of **Mukesh Singh Vs. State (Narcotic Branch of Delhi)** reported in **2021 (1) SCC (Cri) 356 : 2020 (10) SCC 120**. The relevant portion of the said judgment reads as follows:-

''Thus, it is concluded that in a case where the informant himself is the investigator, by that itself it cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. The contrary decision of the Supreme Court in Mohan Lal, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled. The Supreme Court in Varinder Kumar (2020) 3 SCC 321, did not consider in detail the relevant provisions of Cr.P.C., nor did it consider in detail and / or misconstrued the scheme of the NDPS Act. The observations of the Supreme Court in Bhagwan Singh, (1976) 1 SCC 15, Megha Singh, (1996) 11 SCC 709 and Rajangam, (2010) 15 SCC 369 and the acquittal of the accused by the Supreme Court on the ground that as the informant and investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their



own facts. It cannot be said that in the aforesaid decisions, the Supreme Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal.''

24. Accordingly, the said ruling is made clear that because of the reason that the Informant had conducted the investigation alone is not sufficient to acquit the accused from the charge. Herein, it is a case, there was no case on the side of the accused that the Investigation Officer and the accused are having previous enmity or some other disputes. So, without any motive, it is not necessary for the Investigation Officer to foist a false case against the accused, particularly, after recovering 100 Kgs. of Ganja. So, in all aspects, the submissions made by the appellants' counsel not at all having much force to disbelieve the entire case of prosecution. However, it is the case of the prosecution that after securing the alleged Innova vehicle during the time when P.W.1 and P.W.7 attempted to search the vehicle, A2 and A3 were ran away from the scene of occurrence. On the other hand, in the Mahazar prepared by P.W.7, i.e., the intimation given to the accused under Section 50 of the NDPS Act, A2 and A3 have not signed as parties. They are implicated in this case only upon the confession given by them before the Police Officers. It is settled law that the confession to a Police Officer is not a relevant factor to accept the entire prosecution case. In the absence of recovery from A2 and A4, the entire evidence put forth by the prosecution is not establishing the fact that A2 to A4 are having the nexus with the alleged crime. Therefore, in the absence of nexus with the crime, I cannot hold that they are liable to be convicted under the provisions of the NDPS Act. The trial Court without considering the same in proper perspective, concluded the trial and found A2 to A4 guilty under Section 8(c) r/w. Section 20(b)(ii)(C) and Section 8(c) r/w. Section 25 of the NDPS Act and therefore, the said finding is liable to be reversed.

25. In the light of the above discussions stated supra, I am of the opinion that the findings arrived at by the trial Court in respect of the first appellant / A1 alone are correct and therefore, this appeal is dismissed in respect of the first appellant / A1 alone. In respect of appellants 2 to 4 / A2 to A4, this appeal is allowed and the conviction and sentence, dated 14.12.2015, imposed on A2 to A4 alone in C.C.No.200 of 2014, by the learned Additional Sessions Judge, Principal Special Court for NDPS Act Cases, Madurai, are set aside and they are acquitted from the charges. The fine amount, if any, paid by them shall be refunded to them. Bail bond, if any, executed by A2 to A4 shall stand cancelled. The trial Court is directed to secure the first appellant / A1 and commit him to



prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (AE)

// True Copy //

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/ /2021

Sub Assistant Registrar(CS)

smn2

To

- 1.The Additional Sessions Judge,
Principal Special Court for NDPS Act cases,
Madurai.
- 2.The Superintendent, Central Prison, Madurai.
- 3.The Inspector of Police,
Kambam North Police Station,
Theni district.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD) No.33 of 2016
23.08.2021

MA (CO)

KB(01.09.2021) 11P 7C