



Bail slip

Kannusamy, S/o. Mayandi Theva, Male, aged about 57 years / 2016 (Sole Accused) was released on bail vide court order dated 21.04.2016 made in CRL MP(MD)No.2651 of 2016 in CRL A(MD)No.99 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2021

Pronounced on : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Cr1.A.(MD)No.99 of 2016

Kannusamy ... Appellant/Sole Accused

Vs.

State Rep. by
The Inspector of Police,
Kandamanur Police Station,
Theni District.

... Respondent/Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to call for the records in C.C.No.304 of 2009 relating to the judgment dated 11.03.2016 passed by the 2nd Additional NDPS Act Cases, Madurai and to set aside the judgment of the conviction on the appellant/accused.

For Appellant : Mr.S.Krishnamoorthy
(Legal Aid Counsel)

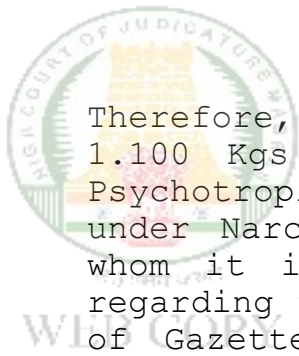
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal is filed to set aside the judgment in C.C.No.304 of 2009 dated 11.03.2016 passed by the 2nd Additional NDPS Act Cases, Madurai.

2.The case of the prosecution are briefly as follows:-

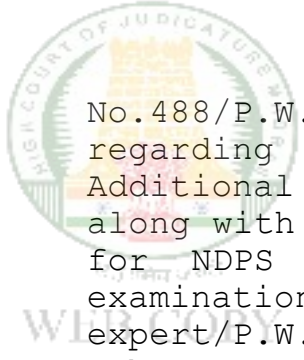
2(i) On 28.11.2008 by 17.00 hours, the Sub Inspector of Police, Kandamanur Police Station, Theni District had conducted raid regarding transport of illicit alcohol on receipt of secret information. While he was proceeding with his party consisting of Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 on Kandamanur - Ganeshapuram Road near Ellai Kalliamman Temple, they found that a person moving from west direction to east direction suspiciously. Since the Sub Inspector of Police, Kandamanur Police Station, had proceeded to conduct raid on illicit ganja dealers, he suspected this person carrying illicit ganja.



Therefore, he got him and on search of his person found him carrying 1.100 Kgs of ganja. As per the provisions of Narcotics Drug Psychotropic Substances Act on search and seizure of contraband under Narcotics Drug Psychotropic Substances Act, the person from whom it is searched and sized should be informed of his right regarding the search. Whether he is to be searched in the presence of Gazetted Officer or a Judicial Magistrate. For which, the accused herein replied that Gazetted Officer or a Judicial Magistrate is not necessary and the police official who got him, himself can search and seize the property. He had given it in writing. Therefore, the Sub Inspector of Police, Kandamunur Police Station in the presence of Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 had searched and from his hib, they recovered ganja weighing 1.100 Kgs. On questioning the accused, he confessed that he had purchased it near Usilampatti. The seized ganja was weighed in a weighing machine that P.W.3 carried on his vehicle was found weighing 1.100 Kgs and its value is Rs.5,000/-. Mahazer was prepared in the presence of Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588. The accused along with contraband was brought to the police. Samples were taken from the seized ganja and it was sealed with the button seal of Kandamanur Police Station and the accused was arrested. A case in Crime No.260 of 2008 under Section 8(c) r/w. 20(b)(ii)(B) of Narcotics Drugs Psychotropic Substances Act.

3.The accused was handed to the escort party along with the seized ganja and the samples sealed from the seized ganja in two pockets were forwarded to the learned Judicial Magistrate, Andipatti, along with the request for remand, complaint of the Sub Inspector of Police and FIR. The FIR is marked as Ex.P4. The copies of the FIR were furnished to the Inspector of Police, Kandamanur Police and to the higher officials. The learned Judicial Magistrate, Andipatti, on receipt of the FIR and letter for requisition of remand by the Inspector of Police, Kandamunur Police Station/P.W.4 had remanded the accused and also directed the accused and the contraband seized from the him to be produced before the Court of learned II Additional Court for NDPS Act Cases, Madurai for remand extension. The initial remand was granted by the learned Judicial Magistrate, Andipatti. Subsequently, the accused was produced for remand extension before the learned II Additional Court for NDPS Act Cases and the contraband seized from his was sent for forensic laboratory for examination along the request letter of the learned II Additional Court for NDPS Act Cases, Madurai.

4.The Inspector of Police, on receipt of the copy of the FIR proceeded with the investigation and recorded the statement of Ilango/Head Constable No.488/P.W.1, Murugan/Head Constable No.588 and P.W.3/Sub Inspector of Police/Subburaj. He had given a request letter to the learned II Additional Judge for NDPS Cases, Madurai, to forward the sample seized from the seized contraband, which was



No.488/P.W.1 and Murugan/Head Constable No.588 under mahazer/Ex.P1 regarding the contraband. On the letter from the learned II Additional Judge for NDPS Act Cases, Madurai, the seized samples along with the requisition letter of the learned II Additional Court for NDPS Act Cases was sent to the forensic laboratory for examination of the samples. Accordingly, the forensic expert/P.W.2/Annamal Mary Stella, Assistant Director, Forensic Laboratory, Madurai City, had analysed the samples received on sealed covers along with the letter of learned II Additional Court for NDPS Act Cases, Madurai. It was found to be cannabis (ganja) and the report of P.W.2 under Ex.P2 was forwarded to the learned II Additional Court for NDPS Act Cases, Madurai. On receipt of Ex.P2, the Inspector of Police/P.W.4 had visited the forensic laboratory, Madurai City examined her and recorded her statement. On receipt of the sample report from the forensic laboratory, Madurai City, received in the Court by the learned II Additional Judge for NDPS Act Cases, Madurai, P.W.4/Sekar Singh satisfied that the accused was carrying contraband, banned under NDPS Act. Therefore, he laid the final report of the investigation under Section 173 of Cr.P.C., before the Court of the learned II Additional Court for NDPS Act Cases, Madurai.

5.On receipt of the final report, the learned II Additional Judge for NDPS Act Cases, Madurai had taken cognizance of the offence under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs Psychotropic Substances Act and numbered the case as C.C.No.304 of 2009.

6.On appearance of the accused before the learned II Additional Court for NDPS Act Cases, Madurai, copies were furnished to the accused under Section 202 of Cr.P.C., and he was questioned regarding the charges framed against him.

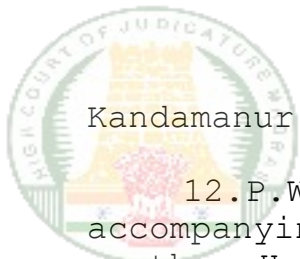
7.The accused pleaded not guilty to the offence and claimed to be tried. Therefore, the trial was ordered and the trial was fixed.

8.The prosecution had examined four witnesses namely., P.W.1 to P.W.4, marked four documentary evidences namely., Exs.P1 to P4 and two materials objects namely., M.O.1 and M.O.2.

9.P.W.1 was the Head Constable No.488/Ilango, who had accompanied P.W.3/Subburaj/Sub Inspector of Police, Kandamanur Police Station on 28.11.2008 by 17.00 hours along with another Head Constable No.588.

10.P.W.2/Annamal Mary Steel, who is working as Assistant Director, Forensic Laboratory, Madurai City had examined the samples of seized ganja and her report is marked as Ex.P2.

11.P.W.3/Subburaj is the Sub Inspector of Police, Kandamanur Police Station and P.W.4/Sekar Singh is the Inspector of Police, Kandamanur Police Station.



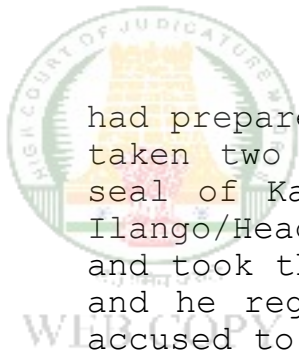
Kandamanur Police Station.

12.P.W.1 in his evidence had spoken about the fact of accompanying P.W.3/Subburaj/Sub Inspector of Police along with another Head Constable No.588/Murugan on 28.11.2008 at 17.00 hours at Theni District within the local limit Kandamanur Police Station at Kandamanur - Ganeshapuram Road near Ellai Kalliamman Temple. The suspect was being got and seized by P.W.3 and on search of the accused, it was found that he was transporting 1.100 Kgs of ganja by hiding in his hip. On questioning by the Sub Inspector of Police/P.W.3, he had stated that he had purchased it from a place near Usilampatti. P.W.3/Sub Inspector of Police had the weighed the contraband and found it to be weighing 1.100 Kgs of ganja. He had informed the accused regarding his right to be searched in the presence of a Gazetted Officer or a Judicial Magistrate. For which, the accused stated that P.W.3 himself can search him and the accused had given it in writing. Accordingly, the accused was searched by P.W.3 in the presence of Ilango/Head Constable No.488/P.W.1 and another Head Constable No.588/Murugan and prepared mahazer under Ex.P1, in which, P.W.1 had attested as a witness. Two samples were taken in small pockets from the seized contraband and sealed in the presence of the accused and Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 by P.W.3. After due formalities, the accused was taken to Kandamanur Police Station and a case in Crime No.260 of 2008 was registered against the accused under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs Psychotropic Substances Act. Copy of the FIR and the seized contraband along with the samples of the contraband were forwarded to the learned Judicial Magistrate, Andipatti by the Inspector of Police/P.W.4.

13.P.W.2/Annamal Mary Stella, who is working as Assistant Director, Forensic Laboratory, Madurai City, had in her evidence deposed that the samples measuring about 50 grams in two pockets were received along with letter of the learned II Additional Judge for NDPS Act Cases, Madurai to analyse the samples and send report. On analysing, it was found to be cannabis (ganja) and the report furnished by P.W.2 to the learned II Additional Judge for NDPS Act Cases, Madurai, is marked under Ex.P2.

14.P.W.3/Sub Inspector of Police, Kandamanur Police Station had spoken about the arrest of the accused and preparation of mahazer in the presence of Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588. He had stated about the information furnished to the accused by him stating that he has the right to be searched in the presence of either a Gazetted Officer or a Judicial Magistrate. Whether he is to be searched in the presence of Gazetted Officer or a Judicial Magistrate. For which, the accused herein replied that Gazetted Officer or a Judicial Magistrate is not necessary and the police official who got him, himself can search and seize the property. He had given it in writing. Therefore, he searched the

<https://hcservices.cmidhcservices.w>



had prepared mahazer under Ex.P1 and and from the contraband, he had taken two samples and he had sealed the contraband by the button seal of Kandamanur Police Station in the presence of the accused, Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 and took the accused and the contraband to Kandamanur Police Station and he registered the FIR under Ex.P4. The letter written by the accused to P.W.3/Sub Inspector of Police, was marked as Ex.P3.

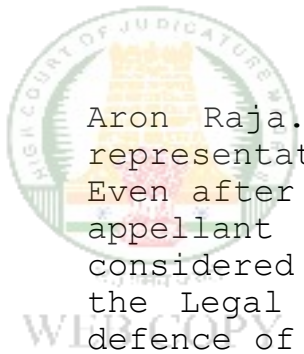
15.P.W.4/Inspector of Police had in his deposition stated the fact that on receipt of FIR, he arrested the accused and sent the samples seized from the contraband seized from the accused by P.W.3/Subburaj/Sub Inspector of Police. P.W.4 forwarded the accused along with the contraband to the learned Judicial Magistrate, Andipatti along with remand request. Accordingly, he obtained remand of the accused and sent him to prison. On the written orders of the learned Judicial Magistrate, Andipatti, the samples were taken to the learned II Additional Court for NDPS Act Cases, Madurai, along with requisition letter of P.W.4 for forwarding the samples seized by P.W.3 to the Regional Forensic Laboratory, Madurai City for forensic report of the samples. After obtaining letter from the learned II Additional Judge for NDPS Act Cases, Madurai, regarding the samples to be analysed by the expert, he had sent the samples through his staff and the forensic analyse report was received in the Court of the learned II Additional Court for NDPS Act Cases, Madurai. On receipt of the report, he went to the Regional Forensic Laboratory, Madurai City and examined P.W.2, Assistant Director, Regional Forensic Laboratory, Madurai City and recorded her statement.

16.Since he satisfied that the offence under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs Psychotropic Substances Act was committed by the accused, he had filed the final report of the investigation in the Court of learned II Additional Judge for NDPS Act Cases, Madurai.

17.After the prosecution evidence was closed, the learned Special Judge for NDPS Act Case, Madurai had examined the accused regarding the indiscriminating evidence available before him against the accused. The accused pleaded not guilty.

18.After hearing arguments of the learned Public Prosecutor and the learned counsel for the accused, the learned II Additional Judge for NDPS Act Cases, Madurai by judgment dated 11.03.2016 had convicted the accused under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs Psychotropic Substances Act and sentenced him to undergo rigorous imprisonment for a period of 15 months and to pay a fine of Rs.5,000/-, in default to undergo four months simple imprisonment. Aggrieved by the judgment of conviction and sentence of imprisonment, the accused filed this criminal appeal.

<https://hcservices.courts.gov.in/hcservices/> Criminal Appeal was filed by Mr.Muniyandi, Ramaligam and Jeya



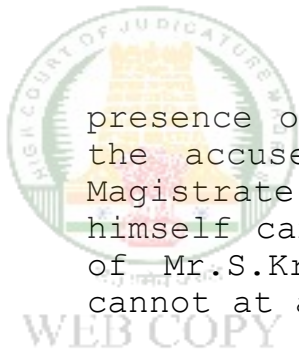
Aron Raja. When the appeal came up for hearing, there was no representation for the appellant. It was repeatedly adjourned. Even after several adjournments, there was no representation for the appellant and the valuable right of the accused having been considered by this Court, this Court appointed a Panel Lawyer from the Legal Service Committee attached to this Court for effective defence of the accused in the appeal. Therefore, the Legal Service Committee attached to this Court had nominated Mr.S.Krihnamoorthy as the learned counsel for the appellant/accused to prosecute the appeal. Accordingly Mr.S.Krishnamoorthy, the learned counsel nominated by the Legal Service Committee attached to this Court had submitted his arguments through virtual mode.

20.As per arguments of the learned counsel for the appellant/accused, the search and seizure alleged in the case by the prosecution was not conducted as per provisions of NDPS Act and there has been some contradictions in regard to the place of occurrence. As per the deposition of P.W1, the consent letter has not been signed by the appellant and the same has also not been attested by any of the witnesses and as per P.W4, all the documents were prepared at the police station.

21.The learned counsel for the appellant would further submit that on analysis of the evidence on record, it is found that the charge sheet had been filed only for the purpose of statistics and the case has not been properly investigated by the respondent police.

22.He also submitted that the learned Trial Judge failed to consider those aspects while assessing the evidence before him and convicted the accused under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs Psychotropic Substances Act, which is perverse. Therefore, Mr.S.Krishnamoorthy, learned counsel for the appellant/accused prayed this Court to set aside the judgment of conviction and sentence of imprisonment and fine imposed on the appellant by the learned Special Judge for NDPS Act Case, Madurai, dated 11.03.2016.

23.Mr.Ramakrishnan, learned Additional Public Prosecutor replied that the submission of the learned counsel for the appellant/accused cannot at all accepted as the Sub Inspector of Police, Kandamanur Police Station/P.W.3 had followed the procedures before proceeding for raid regarding the illicit drag, he had informed his superior officer namely., the Inspector of Police, Kandamanur Police Station of his duty to proceed with the raid along with Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 and when they were proceeding on Kandamanur - Ganeshapuram Road near Ellai Kalliamman Temple, they found that the accused was moving from west direction to east direction suspiciously. On questioning, the accused was found carrying the contraband. <https://hccasecourts.org.in/Reserve3/> informed the accused's right to be examined in the



presence of Gazetted Officer or a Judicial Magistrate. For which, the accused herein replied that Gazetted Officer or a Judicial Magistrate is not necessary and the police official who got him, himself can search and seize the property. Therefore, the argument of Mr.S.Krishnamoorthy, learned counsel for the appellant/accused cannot at all be considered and it has to be rejected.

24.As per the provisions of Narcotic Drugs Psychotropic Substances Act, for the search and seizure, the officer of State Police is also competent. The superior officer must be informed. The accused has to be informed of his right about search. The contraband that had been seized has to be weighed in the presence of the accused and witnesses. The contraband was weighed here in the presence of accused and the witnesses namely., Ilango/Head Constable No.488/P.W.1 and Murugan/Head Constable No.588 and from the seized contraband samples were separately taken in two small pockets and sealed with button seal of the police. The mahazer was prepared under Ex.P1.

25.All these facts had been clearly deposed by P.W.1/Ilango/Head Constable No.488 and the contraband was seized was forwarded to the learned Special Judge for NDPS Act Case along with the request for forensic examination. The report was received from P.W.2 under Ex.P2. The same fact was submitted by Annamal Mary Stella/P.W.2, Assistant Director of Regional Forensic Laboratory, Madurai City in her evidence.

26.P.W.3 who conducted search, seizure and brought the arrested to the police station and the accused was arrested by P.W.4/investigation officer and investigation had proceeded accordingly. Nothing is found that P.W.3 and P.W.4 having not followed any mandatory provisions under Narcotic Drugs Psychotropic Substances Act. The learned Special Judge for NDPS Act Cases had considered all the relevant provisions of Law as well as the facts before him and arrived at a safe conclusion that the accused herein is guilty of the offence under Narcotic Drugs Psychotropic Substances Act and nothing is found perverse. Therefore, the arguments of Mr.S.Krishnamoorthy, learned counsel for the appellant/accused that the finding of guilt recorded against the accused had to be set aside and the accused is to be acquitted from the charges is to be rejected and the appeal is to be dismissed and the finding of guilt already recorded by the learned Special Judge for NDPS Act Case, Madurai had to be confirmed.

27.The learned Additional Public Prosecutor had relied on the following Rulings of the Hon'ble Supreme Court:-

(i) ***Hamidbhai Azambhai Malik Vs. State of Gujarat*** reported in ***AIR 2009 SC 1378***,

(ii) ***SK.Raju @ Adbul Haque @ Jagga Vs. State of West Bengal*** reported in ***(2018) 9 SCC 708*** and

<https://hcservices.ecourts.gov.in/hcservices/>



(iii) **Narayanaswamy Ravishankar Vs. Assistant Director, Directorate of Revenue Intelligence** reported in **(2002) 8 SCC 7**.

28.The Honourable Supreme Court in **Hamidbhai Azambhai Malik Vs. State of Gujarat** reported in **AIR 2009 SC 1378**, held as follows:

"(A) Narcotic Drugs and Psychotropic Substances Act (61 of 1985), S.42 - Pos- session of contraband - Information as to, coming to notice of Investigating Officer in course of patrolling or investigation of some other offence - Not necessary to follow conditions in all cases incorporated in Section 42.

(b) Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 20(b)(ii), 42(2) - Seizure of contraband - Conviction - Validity - Plea that Officer who conducted search was not authorised officer and there was non-compliance of requirement of Section 42(2) - Investigating Officer had noted down in writing information received by him about offence - Said information was transmitted through a messenger immediately to higher officers - It was also recorded in complaint book - Question as to whether officer who conducted proceedings was empowered officer, was not raised earlier - Conviction of appellant is proper."

29.The Honourable Supreme Court in **SK.Raju @ Adbul Haque @ Jagga Vs. State of West Bengal** reported in **(2018) 9 SCC 708**, noted as under:

"(A) Narcotics, Intoxicants and Liquor - Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 42, 43 and 20(b)(ii)(C) - Search and seizure in public place - Contraband recovered from bag carried by accused - Compliance with Section 42 , not mandatory in such circumstances - Rather it is Section 43 would apply.

(b) Narcotics, Intoxicants and Liquor - Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 50 and 20(b)(ii)(C) - Search and seizure in public place - Besides bag of accused being searched, search of person of accused was also conducted, which resulted in recovery of cash from his trouser pocket - Contraband was recovered from bag carried by accused - Compliance with Section 50 - When becomes mandatory - Compliance if made."

30.The Honourable Supreme Court in **Narayanaswamy Ravishankar Vs. Assistant Director, Directorate of Revenue Intelligence** reported in **(2002) 8 SCC 7** held as follows:



"(A) Narcotic Drugs and Psychotropic Substances Act 1985, S.42 - Applicability of, if search and seizure is conducted in a public place (at Airport in this case) - Held , in such case, it is S.43 of the Act which is applicable and not S.42 - Hence, question of non-compliance, if any, of the provisions of S.42 in the instant case, held, was wholly irrelevant,

(b) Narcotic Drugs and Psychotropic Substances Act 1985, S.50 - Applicability of - No search of seizure conducted on the persons of the accused - Hence, provisions of S.50, NDPS Act held to be inapplicable.

(c) Narcotic Drugs and Psychotropic Substances Act 1985, S.57 - Question of compliance with - PW3 stating that the arrest of the accused was revealed to his immediate superior officer - Hence, plea regarding non-compliance with provisions of S.57, rejected

(d) Narcotic Drugs and Psychotropic Substances Act 1985, S.42(1) - Communication of ground of arrest - Arrest memo, a copy of which was received by the accused, clearly indicating the offence stated to have been committed by the accused - Hence, contention that the ground of arrest was not communicated to the accused, rejected.

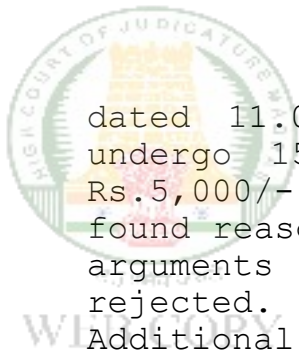
(e) Criminal Trial - Prosecution - Non-examination of a witness - Offence under NDPS Act - Seizure made by PW 1 but mahazar drawn by one S - Defence plea that the prosecution version was vulnerable because S had not been examined, held, was of no consequence in view of the fact that the seizure was conducted by PW 1 - Evidence Act, 1872, S.134 - Prosecution - Non-examination of witness "

31.The reliance placed by the learned Additional Public Prosecutor on the Rulings of the Hon'ble Supreme Court is squarely applicable to the facts of this case.

32.Heard Mr.S.Krishnamoorthy, learned counsel appearing for the appellant accused and Mr.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.

33.The point for consideration in this Criminal Appeal is whether the judgment of the learned II Additional Court for NDPS Act Cases, Madurai, is perverse and is to be set aside?

34.On assessment of the evidence, the findings arrived by the learned II Additional Judge for NDPS Act Cases, Madurai, is found reasonable and acceptable under the provisions of Narcotic Drugs and Psychotropic Substances Act. Therefore, this Court considers that the judgment of the learned Special Judge for NDPS Act Case, Madurai



dated 11.03.2016, convicting the accused and sentencing him to undergo 15 months rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo four months simple imprisonment is found reasonable and acceptable. It is not perverse. Therefore, the arguments of the learned counsel for the appellant/accused is rejected. The judgment of conviction passed by the learned II Additional Judge for NDPS Act Cases, Madurai is confirmed.

35.Regarding appeals, it is already held by the Hon'ble Supreme Court that if the judgment pronounced by the learned Trial Judge is based on proper appreciation of evidence and all the relevant materials available before him or her and during the appeal if on the same set of evidence, even if the Appellate Court comes to an opposite view, the view arrived by the Appellate Court shall not be imposed on the Trial Court. As the Appellate Judge does not have the benefit of assessing the demeanor of the evidence. Therefore, weightage has to be given to the views of the learned Trial Judge, who has the benefit of watching and observing the demeanor of the witnesses and accused.

36.In the light of the above Rulings, the judgment of the learned II Additional Judge for NDPS Act Cases, Madurai is found acceptable. Nothing is found illegal in the procedure followed by P.W.3 and P.W.4. On perusal of the judgment of the learned Trial Judge, nothing is found perverse.

37.In the light of the above discussion, the point for consideration is answered against the appellant and in favour of the prosecution.

38.In the result, the judgment passed by the learned II Additional Court for NDPS Act Case, Madurai, dated 11.03.2016 in C.C.No.304 of 2009 is confirmed and this Criminal Appeal is dismissed.

39.The Trial Court is directed to issue warrant to the accused to secure the accused to undergo the remaining period of sentence and also to collect the fine of Rs.5,000/- for the charge that was imposed on him. The period of incarceration already undergone by the appellant/accused will be set off under Section 428 of Criminal Procedure Code. Bail bond if any, executed by the Appellant/Accused shall stand cancelled.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Judge, II Additional NDPS Act Cases Court,
Madurai.

2.The Inspector of Police,
Kandamanur Police Station,
Theni District.

3.The Superintendent, Central Prison, Madurai.

4. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

Copy to

1.The Record Keeper,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai(2 copies)

2.The Secretary,
High Court Legal Services Authority,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) .No.99 of 2016
30.07.2021

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