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1

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 08.12.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**Crl.A.No.506 of 2016**

State Re. by  
The Public Prosecutor,  
High Court, Madras.  
[K-6 T.P. Chatram P.S., Chennai  
Crime No.139 of 2014]

Appellant

vs.

1.Krishnaveni

2.Mariammal

3.Elumalai

Respondents

**Prayer:** Criminal Appeal filed under section 378 of Code of Criminal Procedure, to set aside the judgment of acquittal of the respondents/accused [A1 to A3] passed in C.C.No.43 of 2014 dated 28.05.2015 by the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai – 104 and convict the respondents / accused [A1to A3] for the charges framed against them in accordance with law.

For Appellant : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

For Respondents : Mr.T.S.Srinivasan

**JUDGMENT**

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The above appeal is filed challenging the acquittal of the respondents 1 to 3 for the offences under Section 8(c) r/w.29 of the NDPS Act and the acquittal of the 3<sup>rd</sup> respondent for the offence under Section 8(c) r/w. 25 of the NDPS Act.

2.It is the case of the prosecution that on 27.02.2014, based on a secret information, the Inspector of Police attached to K6, T.P.Chathiram Police Station deputed a Special Sub Inspector of Police attached to the same Police Station to conduct a vehicle check up and during the said check up, they found that the respondents were transporting ganja in an Auto. It is further case of the prosecution that 1<sup>st</sup> respondent/A1 was found in possession of 22.880 Kgs of ganja and A2 was in possession of 22.450 Kgs of ganja and that A3 was a driver of the Auto rickshaw who was aware about the possession of ganja by the other two accused.

3.The Special Sub Inspector of Police lodged a complaint on the basis of which an FIR was registered in Crime No.139 of 2014 for the offence under Sections 8(c) r/w.20(b)(ii)(C), 25 & 29 of the NDPS Act. The said FIR was marked as Ex.P10. PW5 on the basis of the FIR commenced an investigation and examined the witnesses, collected samples from the contraband seized from



A1 and A2 and sent it to Court with a request to send it for examination by the Forensic Department. On the receipt of the report, on 12.08.2014, he laid the final report against the accused persons for the offence under Sections 8(c) r/w.20(b)(ii)(C), 25 & 29 of the NDPS Act before the Principal Special Judge, Special Court under E.C. & NDPS Cases, Chennai.

4.The Trial Court framed the charge under Section 8(c) read with 29 & 8 (c) read with 20(b)(ii)(C) of the NDPS Act as against A1 and A2 and charge under Section 8(c) read with 25 & 8 (c) read with 29 of NDPS Act as against A3.

5.Prosecution examined five witnesses as PW1 to PW5. The respondents neither examined any witnesses nor marked any documents.

6.The Trial Court found that the prosecution had not established the fact that the respondents 1 and 2 were in possession of commercial contraband. The reason for holding so was that the method of weighing the contraband was not proper. It is the case of PW4 who weighed the contraband that he had a weighing machine which could weigh a maximum of one Kg at a time. He also admitted that he had not recorded as to how many times he had weighed so as to



conclude that the accused were in possession of ganja in excess of 20 Kgs to prosecute them for possessing contraband of commercial quantity. However, the Trial Court found the respondents 1 and 2 guilty of possessing contraband of intermediate quantity punishable under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act and sentenced them to undergo one year and three months rigorous imprisonment. The Trial Court also found that the 3<sup>rd</sup> respondent was not guilty of the charge against him by holding that the prosecution had not established his knowledge that the other co-accused were in possession of contraband. The Trial Court acquitted the respondents of other charges framed against them, against which, the State has preferred the above appeal.

7.The learned Additional Public Prosecutor appearing for the appellant/State submitted that the Trial Court ought not to have disbelieved the evidence of PW4 who had clearly stated that he had weighed the contraband seized from the respondents 1 and 2 correctly. In any case, the learned Additional Public Prosecutor submitted that if the prosecution had failed to establish the exact weight seized from the respondents 1 and 2, the respondents ought not to have been convicted even for the offence of possessing intermediate quantity. Therefore, the learned Additional Public Prosecutor submitted that the reasoning given by the Trial Court for acquitting the



appellants is flawed. The learned Additional Public Prosecutor however was unable to point out the error in the judgment as regards the acquittal of the 3<sup>rd</sup> respondent.

8.The learned counsel for the respondents submitted that the 1<sup>st</sup> respondent is no more which is confirmed by the learned Additional Public Prosecutor on instructions. He further submitted that A2 has served the sentence imposed on her by the Trial Court as regards offence under Section 8 (c) read with 20(b)(ii)(B) of the NDPS Act. The learned counsel further submitted that though they have not challenged the judgment of the Trial Court, the Trial Court ought not to have convicted the respondents even for the offence of possessing intermediate quantity of contraband, since the Trial Court ought not to have assumed that the respondents were possessing intermediate quantity of contraband. The learned counsel further pointed out that, in any case, the prosecution have violated the mandatory provision under Section 52-A of the NDPS Act in not drawing the sample in the presence of the Magistrate and relied upon the judgment of the Hon'ble Supreme Court in ***Simarnjit Singh vs. State of Punjab*** reported in ***2023 Live Law (SC) 570*** which follows an earlier judgment of the Hon'ble Supreme Court in ***Union of India vs. Mohanlal and Another*** reported in ***(2016) 3 SCC 379***.



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9. This Court finds from the judgment that the Trial Court had disbelieved the evidence of PW4 as regards the total quantity seized from the respondents, since PW4 had not produced the rough sheet to indicate the number of times he had weighed the contraband, as the weighing machine could weigh only maximum of one Kilogram at a time. Therefore, this Court finds from the judgment that the Trial Court assumed that the respondents 1 and 2 were in possession of intermediate quantity. If the Trial Court had disbelieved the evidence of PW4, this Court is of the view that it cannot assume the possession of intermediate quantity of contraband also. Be that as it may, this Court finds that the judgment of acquittal has to be sustained for yet another reason as rightly contended by the learned counsel for the respondents that the PW5 has violated the mandatory requirements under Section 52-A (2) (c) of the NDPS Act. The said provision reads as follows:

***[52A. Disposal of seized narcotic drugs and psychotropic substances.-***

*(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the*



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*Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]*

*(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the "[narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of-*

*(a) certifying the correctness of the inventory so prepared; or*

*b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and*



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*certifying such photographs as true; or*

*(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.*

10. The Hon'ble Supreme Court by reiterating the law laid down by an earlier judgment in ***Union of India vs. Mohanlal and Another*** had held that drawing of samples at the time of seizure should be in accordance with law and it has to be done in the presence of Magistrate who has to certify the correctness of the list of samples so drawn. The relevant observations of the Hon'ble Supreme Court in Paragraph Nos.15 to 17 of the judgment in ***Union of India vs. Mohanlal and Another*** are extracted hereunder:

*15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.*



*16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.*

*17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.*



WEB COPY 11. The above passages have been quoted in approval in ***Simarnjit Singh vs. State of Punjab.***

12. Admittedly, the investigation in this case is not in compliance with the said mandatory requirements.

13. Therefore, for the aforesaid reasons, this Court finds no reason to interfere with the judgment of the Trial Court acquitting the respondents for the offence under 8(c) r/w. 20(b)(ii)(C) of the NDPS Act as against A1 and A2 and acquitting the 3<sup>rd</sup> respondent for the offence under Section 8(c) read with 25 & 8(c) read with 29 of the NDPS Act. There is no perversity in the judgment of the Trial Court so as to warrant interference in the instant appeal. Therefore, the appeal deserves to be dismissed.

14. Accordingly, this Criminal Appeal is dismissed.

**08.12.2023**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No

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- 1.The Principal Special Judge,  
Special Court under E.C. & NDPS Act, Chennai – 104.
- 2.The Public Prosecutor,  
High Court, Madras.



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12

**SUNDER MOHAN, J.**

SSR

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