



WEB COPY



Crl.A.Nos.778 of 2022 & 486 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED

Crl.A.No.778 of 2022 on : 05.06.2023

&

Crl.A.No.486 of 2023 on : 07.06.2023

PRONOUNCED ON : 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.Nos.778 of 2022 & Crl.M.P.Nos.4492 & 5727 of 2023
and Crl.A.No.486 of 2023

Nishanth Rayan	...	Appellant in Crl.A.No.778 of 2022
Balachandhar	...	Appellant in Crl.A.No.486 of 2023
Vs.		
State represented by its Inspector of Police, NIB-CID, Chennai. Crime No.08 of 2020.	...	Respondent

PRAYER: These Criminal Appeals have been filed under Section 374(2) of Code of Criminal Procedure to set aside the judgment dated 29.06.2022 passed in C.C.No.92 of 2020 by the Principal Special Court under EC & NDPS Act, Chennai.



Crl.A.Nos.778 of 2022 & 486 of 2023

For Appellant : Mr.R.C.Paul Kanagaraj
in Crl.A.778 of 2022

For Appellant : Mr.N.Baaskaran
in Crl.A.No.486 of 2023

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

Challenging the judgment dated 29.06.2022 passed in C.C.No.92 of 2020 by the Principal Special Court under EC & NDPS Act, Chennai, the present criminal appeals have been filed.

2. Since both the appellants are the accused in Crime No.08/2020 as well as C.C.No.92 of 2020 and the fact of the case is also one and the same, common judgment has been passed in both the criminal appeals.

3.The appellant in Crl.A.No.778 of 2022 is the second accused and the appellant in Crl.A.No.486 of 2023 is the third accused in C.C.No.92 of 2020 on the file of the Principal Special Court Under EC and NDPS Act, Chennai.



WEB COPY

4.The respondent police prosecuted the accused persons/A2 & A3 for having committed offences punishable under Sections 8(c), 22(c), 20(b)(ii)(B), 25 and 29(1) of Narcotic Drugs & Psychotropic Substances Act, 1985 and the prosecution examined four witnesses PW1 to PW4 and marked 19 documents as Ex.P1 to Ex.P19 besides produced 11 materials objects MO1 to MO11.

5.The case of the prosecution as stated by the trial Court is as follows.

On 22.02.2020 at 3.00 a.m. PW1/Mr.Selvin Santhakumar had received information from the informer that on 22.02.2020 at around 6.30 a.m. near NISSI super market, Senthil Nagar, Kolathr, Chennai, three persons, who are known to him, are going to come in 2 two wheelers bearing Reg.No.TN 13-M-0288 blue colour Dominor Bike and TN 05 – AR-7670 black colour Pulsar bike along with contrabands LSD Stamps, Methamphetamine and ganja for the purpose of selling. PW1 had informed the same to Mr.Riyasudeen, DSP Kancheepuram, who was in



WEB COM

charge of Chennai and after that, he also got permission through writings.

The said information is marked as Ex.P1. PW1 went to the spot along with Mr.Manimaran, Head- Constable and Mr.Sudhakar, Head – Constable / PW2 with NDPS Kits. They reached the spot at 6.30 a.m. while they watching, the informer had identified the suspected persons to PW1, who came to the spot with two wheelers bearing Reg.No.TN 13-M-0288 blue colour Dominor Bike and TN 05 – AR-7670 black colour Pulsar bike. They intercepted the suspected persons. They introduced themselves and informed about the information which received from the informer and informed about the search. PW1 had also informed about their rights u/s. 50 of the Act to the said two persons, for which, they have rights to conduct a search before any Judicial Magistrate or any Gazetted Officer. PW1 had requested Karthick and Manivannan to be the witnesses for the search but they refused. Further, the suspected persons had given permission to conduct search by the police. PW1 had issued search notice to them. The search notice is marked as Ex.P2. PW1 had searched them in the presence of Sudhakar, Head-Constable/PW2 and Manimaran, Head



Constable. While searching the 1st accused Vasanthakumar had taken 4 zip-lock covers from his right pant pocket and produced before PW1. In one zip lock cover, there was 22 tablets in the name of NASA. They were blue in colour, weighed at 9.01 grams and it was sealed and marked as P1. Before the Court, it was marked as M.O.1. The second parcel contained 17 tablets in the name of CALL SECURE and they were also blue in colour. It was tested and found to be MDMA Tablets and it was tested and found to be MDMA Tablets weighed 6.99 grams. It was sealed and marked as P2 and the same was marked as M.O.2 before this Court. The third zip-lock cover contained 100 LSD stamps which marked smiley and 100 stamps which blue in colour and the total 200 LSD Stamps were weighed 3.56grams. It was sealed and marked as P3 and the same was marked as M.O.3 before this Court. The fourth zip-lock cover contained Methamphetamine and it was weighed 20 grams. It was sealed and marked as P4 and the same was marked as M.O.4 before this Court. In the seizure mahazar/Ex.P3, the 1st accused, police witnesses and PW1 had signed. The said seizure mahazar was prepared at 7.00 a.m. on 22.02.2020 by PW1 and got signatures from the 1st accused and witnesses and he also signed it.



The second seizure mahazar /Ex.P4 of 2nd accused was prepared at 7.30 a.m. on 22.02.2020. The 2nd accused Nishanth Rayan had taken 2 zip-lock covers from his right pant pocket and produced before PW1. In one zip lock cover, there was 11 tablets in the name of TELEGRAM. They were blue in colour. It was tested and found to be MDMA Tablets weighed at 4.35 grams and it was sealed and marked as P5. Before the court, it was marked as M.O.5. The second zip-lock cover contained 50 LSD Stamps in the name of smiley and they were weighed 0.83 grams. It was sealed and marked as P6 and the same was marked as M.O.6 before this Court. The Motor bike bearing Reg.No. TN 05-AR-7670 black in colour pulsar was seized from the 2nd accused and it was marked as M.O.10 before this Court. The 3rd accused Balachander had produced white colour polythene bag with 2.500 kgs of ganja kept on his bike bearing Reg.No. TN 13-M-0288 Dominor blue colour and two samples lifted out from the ganja each weighed 50 grams and the same were marked as SI and S2 and later they were marked M.O7 and M.O8 before this Court. The remaining bulk ganja was marked as P7 and it was marked MO9 before this Court. The Dominor blue colour bike bearing Reg.No.TN 13-M-0288 was also seized and the



same was marked as M.O.11 before this Court. After that, at 8.30 a.m.

arrest intimation was issued to all the 3 accused and further conducted and inspection was also made on them. The voluntary confession of A1 to A3 had also recorded by PW1. The documents related to arrest are marked as Ex.P6 to Ex.P11. Then PW1 returned to the station along with accused and seized properties. He registered the FIR in crime No.8/2020, u/s.8(c), 22(c), 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. He produced the accused before the Magistrate for remand along with properties under Form – 91. The form 91 is marked as Ex.P17. Then, the Magistrate had remanded the accused to judicial custody. Then PW1 had submitted a special report (Ex.P13) before the DSP, NIBCID u/s 57 of the NDPS Act. Then PW1 had recorded the statements of witnesses. Thereafter, the seized property had produced before the Court on 16.03.2020 for sending analysis and the same was sent to the Lab vide this Court's letter on the same day. The court letter is marked as Ex.P18. After receiving the contraband along with letter, PW3/Mr.Visalatchi, Chemical Examiner had proceeded further and then she had sent the lab report to this Court. The lab report is marked as Ex.P19. On completing his investigation, PW4 submitted his final



Crl.A.Nos.778 of 2022 & 486 of 2023

report before this court on the accused A1 to A3 u/s.8(c) r/w 22(b),

20(b)(ii)(B), 25 and 29(1) of the NDPS Act.

6.Before the trial Court, the prosecution examined 4 witnesses PW1 to PW4 and marked 19 documents as Ex.P1 to Ex.P19 besides produced 11 materials objects MO1 to MO11.

7.When the incriminating materials were put to the appellants/accused under Section 313 Cr.P.C., the accused denied the same as false, they did not choose to examine any witness nor mark any documents.

8.On consideration of the prosecution evidence, the trial Court found guilty and imposed the following sentences:

<i>Rank of Accused</i>	<i>Proved charges</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment</i>
A1	U/s.8(c) r/w 22(c) of the Act	12 years	Rs.1,50,000/-	6 months
A1	U/s.8(c) r/w 22(b) of the	7 years	Rs.50,000/-	6 months



Crl.A.Nos.778 of 2022 & 486 of 2023

<i>Rank of Accused</i>	<i>Proved charges</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment</i>
	Act			
A1	U/s.29(i) of the Act	7 years	Rs.50,000/-	6 months
A2	U/s.8(c) r/w 22(c) of the Act	12 years	Rs.1,50,000/-	6 months
A2	U/s.8(c) r/w 22(b) of the Act	7 years	Rs.50,000/-	6 months
A2	U/s. 29(1) of the Act	7 years	Rs.50,000/-	6 months
A3	U/s.8(c) r/w 22(b) (ii) (B) of the Act	7 years	Rs.50,000/-	6 months
A3	U/s.29(1) of the Act	7 years	Rs.50,000/-	6 months

At the same time, A1 is found not guilty u/s.25 of NDPS Act. A2 is found not guilty u/s.8(c) r/w/20(b)(ii)(B) and 25 of the NDPS Act. A3 is found not guilty u/s.8(c) r/w 22(c) and 25 of the NDPS Act and they are acquitted from the said charges. Aggrieved by this, both the appellants/second and third accused have filed the separate criminal appeal.



9.The learned counsel for the appellants submitted that the finding of the trial Court is against the law and weight of evidence and against all probabilities of the case. Further, submitted that the prosecution filed Exs.P1 to P19. In all these documents, the date of document is not mentioned. All are stored in computer and taken the copy of the same from the computer and filed it before the Court by not following the mandatory provisions Section 65-B of the Indian Evidence Act. Further submitted that the contraband LSD seized from A2 is 0.83 grams. It is only an intermediate quantity and the commercial quantity is 0.1grams but the trial Court treated 0.83 grams as commercial quantity, which is unsustainable. The requirement of provision of Section 42 (1) (2) and 43 of NDPS Act not followed and also not complying with the requirement of Section 50(1) of NDPS Act and reiterated other grounds raised in the grounds of appeal and pleaded to acquit the accused.

10.The learned Additional Public Prosecutor supported the judgment of the trial Court and there is no ground for interference and pleaded to dismiss the criminal appeals as no merit.



11.I have considered the matter in the light of the submissions made by the learned counsel for the appellants as well as the learned counsel for the respondent and have perused the materials available on records.

12.On perusal of the records, it is noticed that PW1 Thiru Selvin Santhakumar, on 20.02.2020 at about 3.00 am while he was in patrolling duty, he had received a secret information that three persons came to near Chennai Kulathur Senthil Nagar, NISSI Super Market at 6.30 am. in two two wheeler viz., TN 13 M 0288 Dominar bike Blue and TN 05 AR 7670 black colour pulsor for selling contraband MDMA Tablets, LSD Stamps, Methamphetamine and Ganja and the information is Ex.P1 and intimated the same to the higher officials. Thereafter, he accompanied with Head Constable Sudhakar PW2 and Manimaran with proper equipments went to the relevant place, at that time, in two two wheeler i.e. TN 13 M 0288 Dominor bike blue colour and TN 05 AR 7670 Block colour Pulsor bike three persons came, after identifying the three persons by the informer, they conducted search after following the legal procedures and consent of the accused. While searching 1st accused Vasanthakumar had taken 4 zip-



lock covers from his right pant pocket and produced before PW1. In one zip lock cover, there was 22 tablets in the name of NASA. They were blue in colour, weighed at 9.01 grams and it was sealed and marked as P1. Before the Court it was marked as M.O.1. The second parcel contained 17 tablets in the name of CALL SECURE and they were also blue in colour. It was tested and found to be MDMA Tablets and it was tested and found to be MDMA Tablets weighted 6.99 grams. It was sealed and marked as P2 and the same was marked as M.O.2 before this Court. The third zip-lock cover contained 100 LSD stamps which marked smiley and 100 stamps which blue in colour and the total 200 LSD Stamps were weighted 3.56grams. It was sealed and marked as P3 and the same was marked as M.O.3 before this Court. The fourth xip-lock cover contained Methamphetamine and it was weighted 20 grams. It was sealed and marked as P4 and the same was marked as M.O.4 before this Court. In the seizure mahazar/Ex.P3, the 1st accused, police witnesses and PW1 had signed. The said seizure mahazar was prepared at 7.00 a.m. on 22.02.2020 by PW1 and got signatures from the 1st accused and witnesses and he also signed it. The second seizure mahazar /Ex.P4 of 2nd accused was prepared



at 7.30 a.m. on 22.02.2020. The 2nd accused Nishanth Rayan had taken 2 zip-lock covers from his right pant pocket and produced before PW1. In one zip lock cover, there was 11 tablets in the name of TELEGRAM. They were blue in colour. It was tested and found to be MDMA Tablets weighed at 4.35 grams and it was sealed and marked as P5. Before the court it was marked as M.O.5. The second zip-lock cover contained 50 LSD Stamps in the name of Smily and they were weighted 0.83 grams. It was sealed and marked as P6 and the same was marked as M.O.6 before this Court. The Motor bike bearing Reg.No. TN 05-AR-7670 black in colour pulsar was seized from the 2nd accused and it was marked as M.O.10 before this Court. The 3rd accused Balachander had produced white colour polythene bag with 2.500 kgs of ganja kept on his bike bearing Reg.No. TN 13-M-0288 Dominor blue colour and two samples lifted out from the ganja each weighed 50 grams and the same were marked as SI and S2 and later they were marked M.O7 and M.O8 before this Court. The remaining bulk ganja was marked as P7 and it was marked MO9 before this Court. The Dominor blue colour bike bearing Reg.No.TN 13-M-0288 was also seized and the same was marked as M.O.11 before



this Court. After that, at 8.30 a.m. arrest intimation was issued to all the 3 accused and further conducted and inspection was also made on them. The voluntary confession of A1 to A3 had also recorded by PW1. The documents related to arrest are marked as Ex.P6 to Ex.P11. Then PW1 returned to the station along with accused and seized properties. He registered the FIR in crime No.8/2020, u/s.8(c), 22(c0, 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. He produced the accused before the Magistrate for remand along with properties under Form – 91. The form 91 is marked as Ex.P17. Then, the Magistrate had remanded the accused to judicial custody. Then PW1 had submitted a special report (Ex.P13) before the DSP, NIBCID u/s 57 of the NDPS Act. Then PW1 had recorded the statements of witnesses. Thereafter the seized property had produced before the Court on 16.03.2020 for sending analysis and the same was sent to the Lab vide this Court's letter on the same day. The court letter is marked as Ex.P18. After receiving the contraband along with letter, PW3/Mr.Visalatchi, Chemical Examiner had proceeded further and then she had sent the lab report to this Court. The lab report is marked as Ex.P19. On completing his investigation, PW4 submitted his final report



WEB COPY

before this court on the accused A1 to A3 u/s.8(c) r/w 22(b), 20(b)(ii)(B), 25 and 29(1) of the NDPS Act.

13. Further, it is noticed that PW1 seized 4.35 grams of MDMA from A2 and the same was marked as P5. He also seized 0.83 grams of LSD from A2 and the same was marked as P6. In the Lab Report/Ex.P.19 given by PW3/Expert, it is clearly proved that P5 found to be N, alpha dimethyl-3, 4 (Methylenedioxy)- Phenethylamine and P6 found to be Lysergide (LSD) in all 2 strips (2x25=50 stamps). As per Notification, in Serial No.134, the small quantity of MDMA is 0.5 grams and the commercial quantity is 10 gram. Here, 4.35 grams of MDMA was seized from A2, which is of intermediate quantity. As per Notification, Serial No.133, the small quantity of LSD is 0.002 grams and the commercial quantity is 0.1 grams. Here, 0.83 grams of LSD was seized from A2, which is not of commercial quantity. Though the court has not framed charge against A2 u/s 8(c) r/w 22 (b) of NDPS Act, he was found in illegal possession of 4.35 grams of MDMA, which is of intermediate quantity. Hence, A2 is found



WEB COPY

guilty u/s.8(c) r/w 22(c) and 22(b) of the NDPS Act. At the same time, PW1 had not seized any narcotic items from A2 and hence, he is found not guilty u/s.8(c) r/w 20(b)(ii)(B) of NDPS Act.

14.I have perused the documents Ex.P1 to P19. Ex.P1 is the Information report, in which, the Inspector signed with date 22.02.2020 at 5.00am. Ex.P2 is the notice to the accused, it did not contain the date. Ex.P3 is the mahazer, in which also, it is noticed that in column Nos.7, 8 & 9 signatories were not mentioned the date, when they signed. Ex.P4 is another mahazer, in which also, the witnesses and the seizer officer and the accused have not mentioned the date, when they signed. Another mahazer Ex.P5, in which also, the witnesses and seizer officer and the accused not mentioned the date, when they signed the document. Ex.P6, Ex.P7 & Ex.P8 are arrest report, in which the witnesses and the Inspector and the accused have not mentioned the date. Exs.P9, 10 & 11 are examination report, in which also, the date when it was prepared is not mentioned by the officer and the witnesses. Ex.P12 is the printed FIR. Ex.P13 is the



WEB COPY report under Section 57 of NDPS Act. Exs.P14, 15 & 16 are arrest memo.

Ex.P14 alone the Inspector mentioned the date 26.02.... below his signature and the accused was arrested on 22.02.2020 at 08.30 hours but the arrest memo is signed by Inspector on 26.02.2020, the remaining arrest memo Exs.P15 and P16, there is no date mentioned by the arresting officer. So, the absence of the date, the abovesaid documents raised a serious doubt when the documents were prepared. It goes to the root of the prosecution. Further, the quantity of LSD seized from the 2nd accused is not commercial one, only intermediate but he was convicted for possession of commercial quantity it is unsustainable.

15. In a criminal trial, an accused person starts with the presumption of innocence in his favour and the presumption holds the field till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubt. The absence of the date prepared in the abovesaid documents Ex.P2 to 11 & 15 & 16 creates a serious doubt about the genuineness of the prosecution case. An order of conviction can be based



Crl.A.Nos.778 of 2022 & 486 of 2023

WEB COPY

only on legal evidence. Where there is an element of genuine doubt then there must be an acquittal as a matter of right, therefore, the accused is entitled for benefit of doubt and entitled for acquittal. The trial Court had not properly considered the abovesaid documents filed by the prosecution. Therefore, the finding of the trial Court is not maintainable and liable to be set aside. By granting the benefit of doubt, acquitted the appellants/accused from all the charges.

16. In the result, the criminal appeals are allowed and the Judgment of conviction and sentence dated 29.06.2022 passed in C.C.No.92 of 2020 by the Principal Special Court Under EC & NDPS Act, Chennai, is hereby set aside and the appellants/accused are acquitted from all the charges. Fine amount, if any, paid by the appellants/accused are ordered to be refunded to them. Consequently, the connected miscellaneous petitions are closed.



Crl.A.Nos.778 of 2022 & 486 of 2023

WEB COPY

17.The order of the trial Court to destroy the contrabands M.O.1 to M.O.9 is hereby confirmed and the order of confiscation of M.O.10 black colour pulsar bike bearing Reg.No.TN 05 – AR – 7670 and M.O.11 Blue colour Dominor Bike bearing Reg.No.TN 13-M-0288 are hereby set aside and ordered them return to the owners of the vehicle after enquiry by the trial Court.

Index: Yes/No
Internet: Yes/No
sms

28.06.2023

To

- 1.The Principal Special Court under EC & NDPS Act,
Chennai.
- 2.State represented by its
Inspector of Police,
NIB-CID, Chennai.
Crime No.08 of 2020.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.Nos.778 of 2022 & 486 of 2023

V.SIVAGNANAM, J.

sms

Pre-delivery Judgement in
Crl.A.Nos.778 of 2022
& Crl.M.P.Nos.4492 & 5727 of 2023
and Crl.A.No.486 of 2023

28.06.2023