



Crl.A.(MD)No.22 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.07.2023

Delivered On : 19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. A.(MD)No.22 of 2017

Suresh

.. Appellant

Vs.

State rep. by
The Inspector of Police,
NIB CID,
Madurai.
In Crime No.124 of 2005.

.. Respondent

Prayer : This Criminal Appeal is filed under Sections 374 of Cr.P.C., to call for the records in C.C.No.417 of 2006 relating to the judgment dated 08.11.2016 passed by the IIInd Special Court for NDPS Act Cases, Madurai and to set aside the judgment of the conviction on the appellant/accused.

For Appellant	: Mr.M.Jothi Basu
For Respondent	: Mr.M.Sakthi Kumar
	Government Advocate (Crl. Side)

JUDGMENT

This appeal has been filed by the appellant to set aside the judgment and conviction passed in C.C.No.417 of 2006 dated 08.11.2016, on the file of the II



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Special Court for NDPS Act Cases, Madurai.

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2.The prosecution case is that on 02.12.2005, at about 07.00 a.m., under information, NIB, CID, Selvaraj received secret information and the same was recorded and informed to the Inspector of Police over phone. Under the direction of the Inspector of Police, the Head Constable along with others went to Madurai Bye Pass, near Guru theatre and caught the accused with a bag containing 3kgs of kanja. The said kanja was seized through Mahazer and then two samples each containing 50 gms were taken for chemical analysis. Thereafter, FIR has been registered in Crime No.124 of 2005 under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act and the same was placed before the Inspector of Police along with report. Then one Thambidurai, P.W.4 had taken investigation and examined the witnesses and send the case properties for chemical analysis and after the examination of witnesses, a final report was filed and the same was taken on file as C.C.No.417 of 2006 by the IInd Special Court for Narcotic Drugs and Psychotropic Substance Act Cases, Madurai. After filing the final report, the copies of records relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C. After hearing accused and the prosecution, the trial Court had framed charges under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act. After framing charges, the charges were read over and explained to



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the accused but the accused denied the charges.

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3.The prosecution had examined P.W.1 to P.W.4 and marked Exs.P.1 to P.9 and marked M.Os.1 to 3. On the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., and he denied the evidences.

4.Upon perusing the oral and documentary evidences, the trial Court found the appellant guilty for the offence punishable under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act and sentenced him to undergo 1½ year rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment and also ordered to set off the period of custody already undergone by the accused as per Section 428 of Cr.P.C.

5.Aggrieved by the said judgment and conviction, the appellant has preferred this present appeal on the following grounds:-

As per the prosecution case, the information has been received by the Head Constable but the information was not disclosed by him to the immediate superior. Moreover the Section 42(2) of Narcotic Drugs and Psychotropic Substance Act has not been followed by the respondent. As per the Section 42(2) the information



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should have forwarded to the immediate superior of who conducted the ride. The Court below erred to consider that the samples were taken by the respondent at the place of occurrence and the respondent affixed the seal of the respondent on the spot itself. But the respondent did not send the seal along with the sample pockets to the chemical laboratories. The Court below has not been considered that the delay of 11 days to produce the contraband to the lower Court. There is no explanation for the delay. Moreover the Section 55 has not been complied by the respondent. The lower Court has not considered the Section 57 of Narcotic Drugs and Psychotropic Substance Act. As per the provision the respondent police should have reported to the immediate superior of the recovery within 48 hours which was not followed by the respondent police and also which was not considered before the convicting the accused. The lower Court has not considered that the appellant is mentally challenged person and the documents were produced by the appellant has not considered before passing the judgment as against him. The chemical analysis report reveals that they were received only 44 grams of kanja from the Court, but the respondent had taken 50 grams of kanja.

6.The learned counsel appearing for the appellant contended that in this case, the secret information which received by the Officer has not been disclosed to his immediate superior and thereby, not followed the mandatory procedure



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contemplated under Section 42(2) of Narcotic Drugs and Psychotropic Substance Act. There is a delay of 11 days in sending the contraband to lab for chemical analysis. The mandatory provision of Section 55 Narcotic Drugs and Psychotropic Substance Act had not complied. As per Section 57 of Narcotic Drugs and Psychotropic Substance Act, the respondent Police should have reported before the immediate superior about the recovery within 48 hours and the same has not been followed in this case. Further the trial Court failed to consider that the appellant is a mentally ill person and the documents filed by the appellant have not been considered by the trial Court. According to the prosecution, the two samples each containing 50 gms of kanja were passed for chemical analysis. As per lab report, only 44 gms were sent to the lab. These are the major discrepancies and the trial Court has not considered the discrepancies and thereby the prosecution case is vitiated and the accused is liable to be acquitted by allowing this appeal.

7.The learned counsel appearing for the appellant has placed reliance on judgments of the Hon'ble Supreme Court in the case of *State of Rajasthan v. Jagraj Singh @ Hansa* reported in (2016) 11 Supreme Court Cases 687 and *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* reported in (2000) 2 Supreme Court Cases 513.



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8.The learned Government Advocate appearing for the respondent has submitted that in this case, there is no procedure violation as alleged by the appellant. As far as Section 42(2) of Narcotic Drugs and Psychotropic Substance Act is concerned, the information already forwarded to the immediate superior. As per evidence of P.W.2, the information was recorded by the said Selvaraj and the same was immediately informed to the Inspector of Police and then only they went to the place of occurrence. Therefore, there is no violation in mandatory provision as alleged by the appellant. Based on information, they went to the place of occurrence and caught red handed the accused and they found a bag in which he had 3 kgs of kanja and the same was seized as per law and two samples each containing 50gms were taken for chemical analysis. There is no delay as alleged by the appellant in sending the properties for chemical analysis. As per form 95, on 02.12.2005 itself, the properties were sent to the Court. Section 50 of Narcotic Drugs and Psychotropic Substance Act will not be applicable to the present case. In this case, the person had not been searched by the police Officer and the bag was only seized by the respondent police and they did not seize and recover any material from the personal body of the accused. As per Section 55 of Narcotic Drugs and Psychotropic Substance Act, the samples were taken by following the procedures and the report also sent to the immediate superior Officer immediately. Therefore, there is no procedure violation as alleged by the learned counsel appearing for the appellant.



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The trial Court has categorically held that the appellant is not mentally ill person and he understood the questions raised by the Court and during 313 examination, he categorically denied the incriminating circumstances against him and thereby there is no illegality in conducting the case by the trial Court. Further the trial Court has analyzed and discussed all the aspects and correctly convicted the appellant and imposed punishment of sentence with fine. Therefore, the appeal has no merits and liable to be dismissed.

9.Upon hearing both sides and perusing the records and grounds, the points for determination in this appeal is whether the prosecution has proved the charges against the appellant under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act beyond reasonable doubt and the judgment and conviction passed by the trial Court are sustainable or not.

Point:-

10.The prosecution case is that on 02.12.2005, when P.W.4 was working as Head Constable in NIB, CID, Madurai at about 07.00a.m., he received secret information and the same was recorded and intimated to his superior official Inspector of Police through phone. Thereafter, he went to Madurai Bypass road, near Guru theatre and at the time, the accused was standing there with a fertilizer



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gunny bag and when the same was searched by the Police, they found that the accused had 3 kgs of kanja and the same was seized through Ex.P2 Mahazer and thereafter, P.W.2 along with accused and case properties went to Police station and registered a FIR in Crime No.124 of 2015 for the offences under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act. A detailed report was sent to the Inspector of Police. After investigation, charge sheet was filed and the case was taken on file as C.C.No.417 of 2006 before the IInd Special Court for Narcotic Drugs and Psychotropic Substance Act Cases, Madurai.

11.In order to prove the case, on the side of the prosecution, P.W.1 to P.W.3 were examined and Exs.P1 to Ex.P9 and M.Os.1 to 3 were marked. P.W.1 to P.W.3 have categorically deposed about the receipt of information, arrest of the accused and the seizure of the case properties and samples sent to chemical analysis. As per Ex.P9, chemical analysis, the samples contained cannabinoids. Further the accused had not denied the possession of the contraband. Therefore, the trial Court after examining all the evidences has come to a conclusion that the prosecution has proved the charges against the accused for the offence under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act and convicted the accused and imposed sentence to undergo 1 ½ years rigorous imprisonment and imposed a fine of Rs.10,000/- in default to undergo six months simple imprisonment.



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12.The main contention of the appellant is that while conducting search of the accused, factum of arrest and seizure materials were not brought to the knowledge of their higher authorities and also the police Officer has not intimated to the superior Officer regarding the concerned information. As far as Section 42(2) is concerned, according to the appellant, the police Officer failed to inform about the occurrence to his immediate superior.

13.In this context, on perusal of evidence of P.W.2, it reveals that on 02.12.2005 when he was in duty at about 07.00 a.m., he received secret information and the same was recorded at about 07.15 a.m. Thereafter the same was informed to the Inspector of Police over phone at about 07.30 a.m. The said information has been marked as Ex.P4. On perusal of Ex.P4, it reveals that on 02.12.2005, secret information was recorded and the same was intimated to the Inspector of Police. Therefore, from the above said records and evidence, it is clear that there is no violation of procedure under Section 42(2) of Narcotic Drugs and Psychotropic Substance Act.

14.The learned counsel appearing for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of *State of Rajasthan v. Jagraj*



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Singh @ Hansa reported in **(2016) 11 Supreme Court Cases 687** wherein the

Hon'ble Supreme Court held as follows:-

“18. There is one more aspect which needs to be noted. The present is a case where prosecution himself has come with case that secret information was received from informer which information was recorded in Exh. P-14 and Exh. P-21 Roznamacha and thereafter the Station House Officer with police party proceeded towards the scene. The present is not a case where the Station House Officer suddenly carried out search at a public place. The Station House Officer in his statement has also come up with the facts and case to prove compliance of [Section 42](#). When search is conducted after recording information under [Section 42\(1\)](#), the provisions of [Section 42](#) has to be complied with. This Court in [Directorate Of Revenue & Another vs Mohammed Nisar Holia](#), (2008) 2 SCC 370, had occasion to consider [Sections 41,42](#) and [43](#) explanation. Following was stated in paragraph 14:

“14. [Section 43](#), on plain reading of the Act, may not attract the rigours of [Section 42](#) thereof. That means that even subjective satisfaction on the part of the authority, as is required under sub-section (1) of [Section 42](#), need not be complied with, only because the place whereat search is to be made is a public place. If [Section 43](#) is to be treated as an exception to [Section 42](#), it is required to be strictly complied with. An interpretation which strikes a balance between the enforcement of law and protection of the valuable human right of an accused must be resorted to. A declaration to the effect that the minimum requirement, namely, compliance of [Section 165](#) of the Code



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of Criminal Procedure would serve the purpose may not suffice as non-compliance of the said provision would not render the search a nullity. A distinction therefor must be borne in mind that a search conducted on the basis of a prior information and a case where the authority comes across a case of commission of an offence under the Act accidentally or per chance.....”

15.The learned counsel appearing for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** reported in **(2000) 2 Supreme Court Cases 513** wherein the Hon'ble Supreme Court held as follows:-

“A two Judge Bench of this Court has considered the said question along with other questions in [State of Punjab v. Balbir Singh](#), [1994] 3 SCC 299. In paragraph 25 of that judgment the conclusions were laid down, of which what is relevant for this case regarding [Section 42\(1\)](#) is the following:

“(2-C) Under [Section 42\(1\)](#) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to [Section 42\(1\)](#) if such officer has



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to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under [Section 42\(2\)](#) such empowered officer who takes down any information in writing or records the grounds under proviso to [Section 42\(1\)](#) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case."

16. On careful reading of the judgments, it is clear that as per Section 42(2) of Narcotic Drugs and Psychotropic Substance Act, information has to be reduced into writing and the said information received has to be sent to immediate superior Officer. In the case on hand, on perusal of the evidence and records shows that P.W.2 has recorded the information and sent it to the Inspector of Police through Ex.P4. Therefore, the above said judgments will not help the appellant to decide the case in his favour.

17. The next contention raised by the appellant is that during search, procedures were not followed as provided under Section 50 of Narcotic Drugs and



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Psychotropic Substance Act and that the police who searched the accused have not followed Section 50 of Narcotic Drugs and Psychotropic Substance Act.

18. In this context, the learned Government Advocate appearing for the respondent has brought to the knowledge of this Court and relied a judgment in the case of ***State of H.P. v. Pawan Kumar*** reported in **(2005) 4 Supreme Court Cases 350**, wherein the Hon'ble Supreme Court held as follows:-

““The word "person" has not been defined in the Act. [Section 2\(xxix\)](#) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code of Criminal Procedure, however, does not define the word "person". Section 2(y) of the Code says that the words and expressions used therein and not defined but defined in [the Indian Penal Code](#) have the meanings respectively assigned to them in that Code. [Section 11](#) of the Indian Penal Code says that the word "person" includes any Company or Association or body of persons whether incorporated or not. Similar definition of the word "person" has been given in [Section 3\(42\)](#) of the General Clauses Act. Therefore, these definitions render no assistance for resolving the controversy in hand.

A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or



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hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in [Section 50](#) of the Act."

19.The learned Government Advocate appearing for the respondent has relied a judgment in the case of ***State of Haryana v. Ranbir @ Rana*** reported in ***(2006) 5 Supreme Court Cases 167***, wherein the Hon'ble Supreme Court held as follows:-

"The question as regards applicability of Section 50 of the Act need not detain us for long. We may notice that in view of conflict in the opinions of different Benches as also difference of opinion between two Judges of this Court in State of H.P. v. Pawan Kumar the question was referred to a larger Bench. A three Judge Bench of this Court in State of H.P. v. Pawan Kumar relying on or on the basis of a large number of decisions and in particular the decision of the Constitution Bench of this Court in State of Punjab v. Baldev Singh clearly held that Section 50 of the 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 or container, etc. which the accused at the relevant time was carrying."

20.On careful reading of the judgments, it is clear that Section 50 of the Act would be applicable only in case of personal search of the accused not when it is



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made in respect of some bags or articles or container ,which the accused at the relevant time of carrying. The above said ratio squarely applicable to the present facts of the case. In this case also, the Police have not made personal search on the body of the accused and only searched property of bag of the accused. Therefore, the contention of the appellant that procedures were not followed while searching the accused under Section 50 of the Narcotic Drugs and Psychotropic Substance Act is not acceptable. As far as the ground that there is a delay of 11 days in sending the samples for chemical analysis is concerned, on a perusal of Form 95, it appears that on 02.12.2005 itself the properties were received by the trial Court. Thereafter the trial Court sent the properties to Lab for chemical analysis. Therefore, there was no delay caused by the prosecution as alleged by the appellant, thereby the arguments of the counsel for the appellant is not acceptable in that regard.

21.Further the contention of the appellant is that the accused was mentally ill and the same was not considered by the trial Court. As far as mental illness of the accused is concerned, there is no document produced by the appellant to prove the same. Further the trial Court itself observed that the accused was mentally sound and he answered the questions during the examination of Section 313(1)(b) of Cr.P.C. Further there is no clarity on the defence side whether the accused was mentally ill person on the date of occurrence or he was mentally ill during the course of trial. If



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the accused was mentally ill person on the date of occurrence for that also no document was produced to show that he was mentally ill on the date of occurrence. If the accused was mentally ill during trial, then the trial Court has to take steps under Section 328 of Cr.P.C., but no such procedure was followed in the trial Court. It shows that the accused was sound state of mind. If the accused was mentally ill person, then the same could be noticed by the trial Court and the trial Court would have invoked the provisions under Section 328 of Cr.P.C. Further the appellant also defended through counsel and the counsel for the accused also did not raise any voice before the trial Court regarding the mental illness of the accused. Therefore, the contention of the appellant in this regard is unacceptable.

22.As far as the deficiency of quantity of the seizure material is concerned, according to the prosecution, two samples of 50 gms of kanja was sent for the chemical analysis but as per chemical analysis report, only 44 gms of kanja alone was received. It is quite nature for deficiency of material due to dryness of the material. There is a chance for little variation.

23.As far as the allegations that procedures contemplated under Section 57 of Narcotic Drugs and Psychotropic Substance Act is not followed is concerned, P.W.2 categorically stated that after the arrest and seizure of the property, the same



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was intimidated to the superior through Ex.P6, report under Section 57 of Narcotic Drugs and Psychotropic Substance Act. The report Ex.P6 also reveals that a report under Section 57 of Narcotic Drugs and Psychotropic Substance Act was sent to the Inspector of Police by Head Constable, 2234, NIB, CID, Madurai. Therefore, there is no any procedure violations in this case as alleged by the appellant. Therefore, as discussed supra, the available evidence proved the guilt of the accused for the offence under Section 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act beyond reasonable doubt. The trial Court also elaborately discussed the oral and documentary evidences adduced on both sides and fairly came to conclusion that the appellant found guilty for the offence punishable under Sections 8(c) r/w. 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act and sentenced him to undergo 1½ year rigorous imprisonment and to pay a fine of Rs. 10,000/- in default to undergo six months simple imprisonment.

24.As far as the sentence is concerned, the trial Court has imposed a sentence of 1½ year rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment and the same is reasonable. Therefore, there is no infirmity found in the judgment and conviction passed by the trial Court and no warrant to this Court to interfere with the trial Court judgment. The trial Court judgment and conviction passed in C.C.No.417 of 2006, are



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P.DHANABAL, J.

Mrn

confirmed. Accordingly, this Criminal Appeal is dismissed. Bail bond if any executed by the appellant shall stand cancelled. The trial Court is directed to take steps to secure the appellant as per law.

19.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Mrn

To

- 1.The Judge, 2nd Special Court for Narcotic Drugs and Psychotropic Substance Cases, Madurai.
- 2.The Superintendent of Prison,
Central Prison,
Madurai.
- 3.The Inspector of Police,
NIB CID,
Madurai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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