



Crl.A.No.32 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.32 of 2023

1. Rajamani

2. Ayyappan

Appellants/A1 and A2

vs.

The State represented by its
The Deputy Superintendent of Police,
NIB CID, Villupuram District.
(Crime.No.34/2021)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to set aside the conviction and sentence against the appellant in Spl.Case No.20 of 2021 passed by the Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram (FAC) dated 29.12.2022.

For Appellants
For Respondent

: Mr.S.Saravanakumar
: Mr.C.E.Pratap
Government Advocate (Crl.Side)



Crl.A.No.32 of 2023

JUDGMENT

WEB COPY

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon them *vide* judgment dated 29.12.2022, in Spl.Case No.20 of 2021, on the file of the learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act cases, Villupuram.

2(a). It is the case of the prosecution that on secret information, the respondent/complainant apprehended the appellants/A1 and A2 and found that the appellants were in possession of 1.250 kg of Ganja; that P.W.1/Inspector of Police, had received information on 09.08.2021, at about 12.00 noon, from a secret informer that the appellants/A1 and A2 were selling Ganja; and that after informing his immediate superior, he reached the spot at 1.30 p.m., and when P.W.1/Inspector of Police inquired the appellants, they handed over one brown colour cover, in which 1.250 kg of Ganja was found. Hence, the complaint.

2(b). P.W.1 seized the said articles under Ex.P4, Recovery Mahazar. Thereafter, P.W.1 proceeded to the Police Station and registered an FIR under Sections 8(c) r/w 20(b)(ii)(B) and 8(c) r/w 29(1) of the Narcotic Drugs



Crl.A.No.32 of 2023

Psychotropic Substances Act, 1985, in Crime No.34 of 2021. P.W.1, thereafter, handed over the samples to the lab, and on receipt of the lab report, he sent the report under Section 57 of the NDPS Act, 1985, to P.W.8. P.W.8, on receipt of the said report, examined the witnesses and members of the raiding party and filed the Final Report for the offences under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act, 1985, on 29.10.2021.

2(c) On the appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in Spl.Case.No.20 of 2021 and made over to the learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Villupuram (FAC) for trial. The trial Court framed charges u/s. 8(c) r/w 20(b)(ii)(B) and 29(1) of the NDPS Act, 1985, against the appellants, and when questioned, the appellants pleaded 'not guilty.'

2(d). To prove the case, the prosecution/respondent/complainant examined eight witnesses as P.W.1 to P.W.8 and marked twenty-five exhibits as Exs.P1 to P25, besides the sample contrabands and bulk as M.O.1 to M.O.3. When the



Crl.A.No.32 of 2023

appellants were questioned u/s. 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the appellants and no documents were marked.

2(e). The Trial Court, after considering the evidence on record, found that the appellants were guilty, convicted the appellants/accused for the offences under Sections 8(c) r/w 20(b)(ii)(B) and 8(c) r/w 29(1) of the NDPS Act, 1985, and sentenced them as follows:

Accused No.	Offence	Sentence imposed
A1	8(c) r/w 29(1) of the NDPS Act	To undergo one year of RI and to pay a fine of Rs.10,000/- and in default to undergo 3 months of RI.
	8(c) r/w 20(b)(ii)(B) of the NDPS Act.	To undergo one year of RI and to pay a fine of Rs.10,000/- and in default to undergo 3 months of RI.
A2	8(c) r/w 29(1) of the NDPS Act ,	To undergo one year of RI and to pay a fine of Rs.10,000/- and in default to undergo 3 months of RI.
	8(c) r/w 20(b)(ii)(B) of the NDPS Act.	To undergo one year of RI and to pay a fine of Rs.10,000/- and in default to undergo 3 months of RI.
The sentences imposed are directed to run concurrently.		

Hence, the accused have preferred the appeal challenging the said conviction and sentence imposed on them.



Crl.A.No.32 of 2023

WEB COPY

3. Mr.S.Saravanakumar, the learned counsel for the appellants/A1 and A2, would submit that the appellants are entitled to acquittal on the ground that the respondent have violated the Mandatory Provisions under Section 42(1) and Section 52A of the NDPS Act, 1985; that the seizure itself is doubtful as the evidence of P.W.1 and P.W.5, the members of the raiding party, is contrary to each other; and that all other independent witnesses have turned hostile and therefore prayed for acquittal.

4. Mr.C.E.Pratap, the learned Government Advocate (Crl.Side) for the respondent, *per contra*, submitted that even though the independent witnesses have turned hostile, the evidence of the officials is cogent and convincing, and the prosecution has established its case beyond reasonable doubt and therefore submitted that the Judgment of the trial Court may be confirmed.

5. Heard the learned counsel on either side and perused the records.



WEB COPY

6. P.W.1 is the Inspector of Police, who had apprehended the appellants and seized the contraband in the presence of P.W.2. P.W.2 turned hostile. P.W.3 is the witness for the Observation Mahazar (Ex.P14), who turned hostile. P.W.4, who had signed as a witness in Ex.P15, turned hostile. P.W.5 is a Head Constable, who is said to have accompanied P.W.1/Inspector of Police, at the instance of the secret informer, to apprehend the appellants. P.W.6 is a Head Constable who had also accompanied P.W.1. P.W.7 is the Assistant Director in the Forensic Science Laboratory and had given a report stating that the contraband found in the sample was Ganja and had issued Ex.P25/Chemical Analysis Report. P.W.8 is the Investigating Officer who had filed the Final Report.

7. From the above narration of the evidence, it would be seen that the seizure and the arrest of the accused are spoken to only by P.W.1 and P.W.5; the other witnesses turned hostile. P.W.1 would state that they went to the spot mentioned by the secret informer at 1.30 p.m., and at that place, the secret informer pointed out the appellants and identified them. However, P.W.5, the



Crl.A.No.32 of 2023

Head Constable who accompanied P.W.1, would state that the secret informer

had asked the police party to go to the spot as the appellants were standing there.

However, he had not stated anything about the presence of the secret informant for the purpose of identification.

8. That apart P.W.1 would state that the contraband was taken from a nearby bush kept in a cover wrapped in a brown colour cello tape, and thereafter, it was weighed and transferred to a white colour bag before drawing the samples. However, P.W.5 would state that the contraband was taken from a white colour cover and thereafter weighed immediately, and he does not speak about the transfer of contraband in a white cover. Further in the evidence of P.W.1, it is stated that two samples, each weighing 25 grams, were drawn, numbered as S1 and S2, sealed, and kept in a white colour cover. However, the report of the Forensic Science Department would show that the samples were kept in a light green coloured cover.

9. Be that as it may. According to the evidence of P.W.1, the samples were drawn by P.W.1 himself from the seized cover and he had affixed a seal in the



Crl.A.No.32 of 2023

presence of P.W.2 and another witness and numbered it as S1 and S2. P.W.1 had not taken any steps to have the samples drawn in the presence of the learned Magistrate, in order to ensure the authenticity of the process. Interpreting Section 52A of the NDPS Act, 1985, the Hon'ble Supreme Court had held that the samples must be drawn in the presence of learned Magistrate and the inventory of the substance seized or of the list of samples so drawn must be certified by the learned Magistrate and that would alone constitute primary evidence for the purpose of trial. The relevant observations of the Hon'ble Supreme Court in ***Yusuf @ Asif Vs. State*** reported in ***2023 SAR Online (SC) 1215*** read as follows:

“12. A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under Section 53, the officer so referred to in sub-section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for



allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

13. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under sub-sections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the presence of a gazetted officer is not sufficient compliance of the mandate of sub-section (2) of Section 52A of the NDPS Act.

14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on



record to prove that the Magistrate had certified the inventory of the substance seized or of the list of sample so drawn.

*15. In **Mohanlal's** case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.”*

Therefore, since there is no evidence on record to show that the samples of the seized contrabands were drawn in the presence of the learned Magistrate and the inventory of the seized substance and the list of samples so drawn were certified by the learned Magistrate, it is clear that there is a violation in the Mandatory Provisions under Section 52A of the NDPS Act, 1985.



Crl.A.No.32 of 2023

WEB COPY

10. Therefore, in view of the above inconsistent evidence of the members of the raiding party as regards the manner in which the contraband was seized; the fact that the independent witnesses turned hostile; and the violation of the Mandatory Provision stated above, the Judgment of conviction cannot be sustained. Hence, the Judgment of the Trial Court is liable to be set aside.

11. In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charges u/s.8(c) r/w 20(b)(ii)(B) and 29(1) of the NDPS Act, 1985, and they are directed to be set at liberty forthwith, unless their conviction is required in connection with any other case. The conviction and sentence passed in Spl.Case No.20 of 2021, on the file of the learned Special Judge, Special Court for Trial of Narcotic Drugs and Psychotropic Substances Act cases, Villupuram, *vide* judgment dated 29.12.2022, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

15.11.2024



Crl.A.No.32 of 2023

Neutral citation : yes/no
dk

WEB COPY

Copy to :-

- 1.The Special Judge,
Special Court for Trial of Narcotic Drugs and
Psychotropic Substances Act cases, Villupuram.
- 2.The Deputy Superintendent of Police,
NIB CID,
Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras



WEB COPY



Crl.A.No.32 of 2023

SUNDER MOHAN,J.

dk

Crl.A.No.32 of 2023



WEB COPY



Crl.A.No.32 of 2023

15.11.2024