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CRL.A(MD)Nos.69 & 315 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	14.02.2024

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)Nos.69 and 315 of 2022

CRL.A(MD)No.69 of 2022:

Rajendran

.. Appellant/Accused No.3

Vs.

The Intelligence Officer,
NCB, Madurai Sub Zone,
Madurai.

(F.No.48/1/01/2018/NCB-MDU)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the judgment of the lower court made in C.C.No.34 of 2018 on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act cases, Pudukottai dated 07.01.2022 and acquit the Appellant herein from



CRL.A(MD)Nos.69 & 315 of 2022

the above said charges.

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For Appellant : M/s.AL.Gandhimathi, Senior Counsel
for Mr.R.Rajan

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for NCB
Cases

CRL.A(MD)No.315 of 2022:

1. Siva
2. Ananthan

Petitioners Now confined at
Central Prison, Trichy.

.. Appellants/Accused No.1 & 2

Vs.

State through the

Inspector of Police,

NCB, F.No.48/1/01/2018/NCB-MDU,

Madurai.

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order of the conviction sentence passed in C.C.No.34 of 2018, dated 07.01.2022 on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act cases, Pudukottai and allow this Criminal



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CRL.A(MD)Nos.69 & 315 of 2022

Appeal.

For Appellant : Mr.P.Senguttarasan

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor
for NCB Cases

COMMON JUDGMENT

Since these appeals are arising out of the same crime, these appeals are taken up together for hearing and disposed of by way of this common order.

2. The accused in C.C.No.34 of 2018 on the file of the learned Additional District Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act cases, Pudukottai, filed these appeals challenging the conviction and sentence passed against the appellants as follows:



Accused Rank	Conviction for the Offence under Section	Sentence of Imprisonment
A1	8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act and 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	10 years R.I each, and a fine of Rs.1,00,000/- each, in default, to undergo 3 months R.I each. (total fine amount Rs. 2,00,000/-)
A2	8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act, 8(c) r/w 20(b)(ii)(C) of the NDPS Act and 8(c) r/w 20(b)(ii)(C)r/w 25 of the NDPS Act.	10 years R.I each, and a fine of Rs.1,00,000/- each, in default, to undergo 3 months R.I each. (total fine amount Rs. 3,00,000/-)
A3	8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act and 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	10 years R.I each, and a fine of Rs.1,00,000/- each, in default, to undergo 3 months R.I each. (total fine amount Rs. 2,00,000/-)

3. PW1 received a secret information on 08.01.2018 that A1 procured Ganja at Salem and transported the same for delivery to A3-Rajendran at Kottur, Thiruvarur on 09.01.2018 and he was likely to travel via Trichy. The said information was orally informed to the Superintendent of PW1 at Kochi through phone and the same was reduced in writing under Ex.P1 and sent to the Superintendent at Kochi through messenger. Thereafter, they reached Valavanthankottai Toll Plaza, Thoothukudi in Thanjavur-Trichy National Highways on 09.01.2018 and at around 14.05



hours, the Truck bearing Registration No.TN.28AB5177 came from Trichy and the same was stopped at toll booth and after disclosing their identity to the driver and the another person travelled in the vehicle took the vehicle to the side of the highway near the toll plaza. Thereafter PW1 disclosed about the illegal transportation of the Narcotic Drugs. Both of them replied affirmatively that they carried 350 kg Ganja in the Truck for delivery to one Rajendran to Kottur, Thiruvarur. On removing the triple layer cover on the truck they seized 177 packets. Each packets were cut open and a small amount of sample was taken and tested through the multiple drug testing kit brought by them. Each test gave positive result of cannabis. Since the substance in all the packets were similar in colour, texture and chemical properties, the entire substances were put together in 8 different nylon gunny bags and marked as Ex.P1 to Ex.P8. In the meantime, at around 15.50 hours, a team of NCB consisting of the driver-Kannan and investigating officer-Joseph Dhanaraj and Havildhar Ganesan went to Kottur, Thiruvarur to nab Rajendran-A3. Further proceedings were continued in the presence of the witnesses and each contraband was separately weighed on the electronic machine brought by NCB officials and the total weight was found to be 350 kgs. Two samples of 25 gms each



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from eight bags were drawn and packing materials, kakhi papers, brown colour tap along with binding strings were put in the another white gunny bag and marked as Ex.P9. Necessary lables were affixed on the samples and on the gunny bags were marked as Ex.P1 to Ex.P9. The Tarpaulin cover was tied and marked as Ex.P10. Along with the recovered materials, the team of NCB officials returned by 07.30 p.m with one person namely, Rajendran-A3 in this case and the appellant in Crl.A(MD)No.69 of 2023. Thereafter, PW1 with the help of the investigating officer explained the provision of Section 50 of the Act and the accused had waived off their right under Section 50 of the Act and the personal search was allowed by the NCB officials and the said provisions were marked under Ex.P2 to Ex.P4. They conducted search on them which resulted in the recovery of the cell phones, ID cards, ATM cards, yellow metal ornaments and they prepared detailed mahazar describing the entire search and seizure proceedings and test memo in triplicate regarding the drawing of samples drawn on the spot by using his laptop and printouts taken from the toll plaza office. The contents of the mahazar was explained to the accused in Tamil and they accepted it as correct and appended their signature an each properties marked under Ex.P1 to Ex.P10 and samples in the 8 papers, in



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all the documents and two witnesses from the toll plaza also attested the same. The seizure mahazar is Ex.P5. Thereafter all the accused received summons under Section 67 of NDPS Act on the spot. The accused voluntarily accompanied with the NCB officials to visit NCB office at Madurai for their examination. The original RC book and National Permit Pollution Certificate, Declaration of TDS, Toll Gate Ticket, Driving license of the accused, Indian Bank Debit Card also were recovered and marked as Ex.P6 to Ex.P15 respectively. The summons under Section 67 of the NDPS Act were issued. Thereafter the statement under Section 67 of the NDPS Act was recorded and the accused were arrested and complaint was filed against the accused/A1 under Section 8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act and 8(c) r/w 20(b)(ii)(C) of the NDPS Act, against A2 under Sections 8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act, 8(c) r/w 20(b)(ii)(C) of the NDPS Act and 8(c) r/w 20(b)(ii)(C)r/w 25 of the NDPS Act and also against A3 under Sections 8(c) r/w 20(b)(ii)(C) r/w 29(1) of NDPS Act and 8(c) r/w 20(b)(ii)(C) of the NDPS Act.



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4. To prove the case of the prosecution, they examined six witnesses, namely, PW1 to PW6, marked Ex.P1 to Ex.P49 and also produced M.O.1 to M.O.44.

5. Thereafter, the learned trial Judge questioned them under Section 313 Cr.P.C on the incriminating materials available against the appellants. They denied the same as false. On the side of the accused, no witness was examined and documents were marked. The learned trial Judge, considering the above materials and also argument of the appellants' counsel and the learned Special Public Prosecutor, convicted the appellants for the above stated offence by the impugned judgement dated 07.01.2022.

6. The learned counsel for the appellants in Crl.A(MD)No.315 of 2022 made the following submissions:

6.1. In this case, the prosecution failed to comply the Section 52 A of the NDPS Act. The learned counsel for the appellants submitted that the Hon'ble Supreme Court in the recent decision reported in Crl.A.No.1443



of 2023 and other judgements reiterated the guidelines issued in the case of *Union of India vs. Mohanlal and another* reported in **2016 (3) SCC 379**, acquitted the accused on the ground that no sample was taken in the presence of the learned Judicial Magistrate. In the said circumstances, they are entitled for acquittal. The learned counsel for the appellants further submitted that two witnesses from the toll plaza were examined at the time of seizure of the contraband. One of the witnesses was examined as PW3. PW3 turned hostile. In the said circumstances, the prosecution failed to prove the recovery of the contraband as alleged by the prosecution even though PW1 and other police officers deposed. But when the independent witness was examined, more particularly, from the toll plaza where the recovery was made, they did not support the prosecution case and hence there was a suspicion regarding the recovery. Hence, without proof of recovery, no presumption under the Act arises. Hence, the foundational facts have not been proved in this case. Further, it is submitted that there was no compliance under Section 42 of the NDPS Act. Hence, he seeks for acquittal. The learned counsel also submitted that there are number of discrepancies regarding the recovery of the contraband and other material aspects between the witnesses. There was a discrepancy relating to the



packing of the sample. He relied the portion of the evidence at page No.7, 46, 102, 106, 129 and 130. In the said circumstances, he pleaded that the entire collection of the evidence by the prosecution suffers from legal infirmities and hence, on the basis of the material, conviction passed by the learned trial Judge is liable to be set aside.

7. On behalf of the appellant in Crl.A(MD)No.69 of 2022, the learned Senior Counsel Ms.ARL.Gandhimathi made the following submissions:

7.1. The learned Senior counsel elaborated the argument submitted by the above said counsel regarding the above infirmities and also the non-compliance of Section 52 of the NDPS Act. In addition to that she specifically stated that the charges against this appellant is not properly framed. In the charge, no time is mentioned. Hence, there is a defect in the charge. The learned Senior counsel further submitted that except the co-accused's confession, there is no connecting material to prove the charges against this appellant, namely A3. The learned Senior counsel further submitted that even though they collected the call details, there is



no nexus between the date of occurrence and the communication made earlier. To supplement the above argument of the learned Senior counsel, the learned counsel on record for A3, namely Thiru.R.Rajan submitted that as per Section 10 of the Evidence Act, confession of the co-accused to prove the conspiracy does not start with the confession of the co-accused, but it should be proved with the other materials. But, in this case, except Section 67 statement, no other documents are produced. Hence, he further elaborated the arguments that as far as the conspiracy is concerned, it can be proved either through the circumstantial evidence or direct evidence. In most of the cases, direct evidence is not available. The circumstantial evidence alone is available. In this case, no circumstances were brought out by the prosecution to prove the involvement of this appellant. He stated that in the charge itself, there is no mentioning of date. According to the prosecution, A1 and A2 disclosed that they transported Ganja, in order to supply to A3. Except that no evidence is adduced by the prosecution that this appellant/A3 made any contribution either to purchase the contraband or transmitted from the destination from Salem to Thanjavur. Once the charge against the appellant/A3 under Section 27 A of the Act ends in acquittal, the charge against the appellant under Section 29 (1) of



the NDPS Act is not made out. Therefore, the guilt of the appellant under Section 29(1) of the NDPS Act is liable to be set aside for which he relied number of precedents of the Hon'ble Supreme Court as follows:

1. 2019(8)SCC811 [Mohammed Fasin v. Intelligence Officer]
2. 2018(8)SCC271[Surinder Kumar Khanna v. Intelligence Officer]
3. 2009(12)SCC161[Union of India v. Balmukumd]
4. 2004(1)MWN(cri)260[Peter John v. Customs Sea Base Party]
5. 2011(3)MWN(cri)614[Tharmarasa Satheesan v. Intelligence Officer]
6. 2000(3)MWN(cri)183[P.U.Regis v. Superintendent of Central Excise]

8. The learned Special Public Prosecutor, Mr.C.Arul Vadivel @ Sekar, made the following submissions apart from filing of written statement:

8.1. The learned Special Public Prosecutor in the written argument as well as the oral argument submitted that PW1 received information and followed the procedure and seized the contraband and produced before the



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Court on time and taken the sample as per the guidelines and produced the same before the Court without any delay. He also obtained the chemical analysis report and filed the complaint against the appellants under the above charged offence. The evidence of PW1 and PW2 is cogent and trustworthy and there is no reason to disbelieve the same. No motive is attributed against PW1 and PW2 to implicate the accused. In the said circumstances, the seizure was clearly proved through their evidence. The learned Special Public Prosecutor further submitted that one of the witness turned hostile is not a ground to disbelieve the evidence of PW1 and PW2. He placed the number of Hon'ble Supreme Court judgements and argued that either non-examination on the independent witness or hostility of the independent witness is not a ground to disbelieve the evidence of the official witnesses when the same is cogent and trustworthy. In this case, even though PW1 and PW2 were subjected to cross-examination, no material was brought to disbelieve their evidence. In the said circumstances, he prayed this Court to confirm the finding of the learned trial Judge in respect of the recovery of contraband. The learned Special Public Prosecutor further submitted that the sample was properly taken as per the guidelines. The learned Special Public Prosecutor also argued that



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in this case of argument of the counsel that Section 50 of the Act is not complied with is concerned, the recovery is made from the Truck and hence, there is no necessity to comply the condition. The learned Special Public Prosecutor further submitted that A1 and A2 never gave any explanation during Section 313 Cr.P.C questioning and also regarding the above recovery. The learned Senior counsel further submitted that the learned counsel for A3's argument that the charge against A3 is alleged on the basis of the Section 67 statement of A1 and his statement under Section 67 of the NDPS Act. But apart from that there were a frequent contacts between A1 and A2 and the same was proved through the statement of the CDR report with the 65B certificate. In the said circumstances, the case against A3 is also clearly proved. Hence, he seeks for confirmation of the conviction and sentence passed by the trial court. He relied number of judgements of the Hon'ble Supreme Court as follows:

1. 2121(5)SCC724[State (MCT of Delhi) Narcotics Control Bureau v. Lokesh Chadha]
2. 2022 Live Law (SC)577[Satender Kumar Antil v. Central Bureau of Investigation and another]
3. 2015(13)SCC605 [Bhim singh v. Union of India and others]



4. 2020SCCOnline Bom 878 [Maksud Sheikh Gaffur Sheikh v. State of Maharashtra]
5. 2023SCCOnline ker 998[Midlaj v. Union of India]

9. This Court has considered the rival submissions made by both side counsel and the materials produced before this Court and the impugned judgement and the precedents relied upon by them.

10. Proof of recovery:

PW1 and PW2 clearly deposed about the recovery made from the Truck driven by the appellant/A1. The said Truck was intercepted at the toll plaza. The toll gate ticket was marked as Ex.P10. PW1 clearly deposed about the seizure of the contraband from the said Truck. The same was corroborated by the evidence of PW2. All the seized contraband also was produced before the Court. The learned Judicial Magistrate also issued a certificate under Section 52A of the NDPS Act which was marked as Ex.P 39. Ex.P39 reads as follows.:

“I allow the above applicatin under sub-section (3) of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act 1985 and



hereby, certify the correctness of the enclosed inventory the enclosed photographs taken and the list of samples drawn in my presence.”

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11. As per the Section 52A(3) of the NDPS Act, once the investigating officer complied Section 52 A of the Act, then as per 52A(4) the contraband are seized as primary evidence in respect of this offence. Section 52A(4) of NDPS Act 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 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 3[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 3[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 3[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 3[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 4[such drugs, substances or conveyances] and 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.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of 5[narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.] ”

12. From the above facts, the evidence clearly proved the recovery of the contraband from A1 and A2, namely, they crossed the toll gate for which they produced the Ex.P10 and also Section 52A certificate. In the said circumstances, once possession is proved, the presumption under the Act comes. In this case, the investigating agency not only proved the possession through the evidence of PW1 and PW2, but also through the



compliance of Section 52A of the Act and the document also marked under Ex.P38 and Ex.P39. To rebut the presumption, the accused A1 and A2 has not adduced any evidence and proved their case as per the parameter of Section 35 of the NDPS Act. Section 35 of NDPS act reads as follows.:

35. Presumption of culpable mental state. —

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

13. As per Section 35 of NDPS Act, it is the duty of A1 and A2 to prove the case that they have no such a mental state with the respect to the act charged as offence by the prosecution. In this case, no such proof was made on the side of the appellants as rightly pointed out by the learned Special Public Prosecutor. The independent witnesses are not necessary to prove the seizure. To fortify the same, the judgement of the Hon'ble Supreme Court reported in **Safi Mohd v. State of Rajasthan** reported in



MANU/SC/0402/2013 is relevant.

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“20. No doubt the independent witnesses have turned hostile, but the learned sessions judge has rightly accepted the testimony of the police witnesses after proper appreciation of their evidence and he has rightly placed reliance upon the police witnesses to prove the seizure of the documents from the house of the appellant and therefore the same cannot be held to be bad in law as contended by the learned counsel for the appellant.

21. Further, the learned sessions judge has rightly accepted the testimony of the witnesses to prove the recovery of documents by assigning reasons and therefore the same cannot be rejected merely on the ground that they are police officials who are members of raiding party and that the matters under the Official Secrets Act are very sensitive which required immediate action. In these circumstances, the investigation does not become defective as contended by the learned counsel for the defence for the reason that the search warrant was not obtained and the recovery of documents and articles from the appellant's house could not be rejected.”

14. It is not the case of the appellants, namely, A1 and A2 that they never transported the Ganja in the Truck. There was no explanation under Section 313 Cr.P.C., questioning for the above said circumstances. In the said circumstances, the prosecution clearly proved that A1 and A2



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transported 350 kg Ganja in the said truck and the same was proved through the evidence of the prosecution witnesses and also the documents beyond reasonable doubt. Hence this Court is inclined to confirm the conviction and sentence imposed against them/A1 & A2, and accordingly, the conviction and sentence imposed against A1 and A2 is hereby confirmed.

15. The case of A3 is that he is implicated only on the basis of the confession statement of the co-accused. The prosecution framed charge against A3 under two headings namely, charge framed under Section 29(1) of the NDPS Act and also framed charges under Section 27A of the NDPS Act. The learned trial Judge acquitted the accused for the charge under Section 27A of the Act against the appellant/A3. To appreciate the said charges, it is relevant to extract the contents of the charge as follows.:

Accused Rank	Charges
A1	1. 8(c) r/w 20(b)(ii)(C) r/w & 29(1) of the NDPS Act. 2. 8(c) r/w 20(b)(ii)(C) of the NDPS Act.



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A2	1. 8(c) r/w 20(b)(ii)(C) & 29(1) of the NDPS Act 2. 8(c) r/w 20(b)(ii)(C) of the NDPS Act 3. 8(c) r/w 20(b)(ii)(C)r/w 25 of the NDPS Act.
A3	1. 8(c) r/w 20(b)(ii)(C) & 29(1) of the NDPS Act 2.8(c) r/w 27(A) of the NDPS Act 3. 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

16. The second charge is the continuation of the first charge. On the basis of the conspiracy, the appellant/A3 is said to have handed over Rs.3 lakhs as advance to transmit the quantity of Ganja. When the receipt of the advance amount is not proved, then the case of the conspiracy goes. Further to prove the conspiracy except Section 67 statement, no other evidence is produced. As per **Tofan Singh** case reported in **AIR 2020 SCC 5592**, the statement Section 67 NDPS Act, is not admissible. In view of the development of law, on the basis of the statement under Section 67 NDPS Act, the accused entered into conspiracy is not acceptable one. The prosecution also relied the CDR report. In the CDR report, there is no material connecting the appellant/A3. He made some phone calls long before with A1. From that, it cannot be presumed that the appellant has



conspired with other accused to transport the same without any call made on 08.01.2018 or 09.01.2018. Even the said call details, only create suspicion. Suspicion is not legal proof to convict the appellant for the grave charge under the NDPS Act. In this aspect, it is relevant to note the following judgments of the Hon'ble Supreme Court:

In *Sheila Sebastian V. R.Jawaharaj and another* reported in **2018 (7) SCC 581**

28.... Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof.

In *Digamber Vaishnav v. State of Chhattisgarh*, (2019) 4 SCC 522
at page 527

14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong



coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

In Surinder Kumar Khanna v. Directorate of Revenue Intelligence, (2018) 8 SCC 271 at page 280

13. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court.

17. As held by the Constitution Bench judgement reported in **2020 10 SCC 120** in the case **Mukeshsingh Vs. State**, it is the duty of the prosecution to prove the foundational facts against each accused. In this case, there are no materials used to prove the conspiracy between the appellants. Further, the learned trial Judge acquitted the appellant under



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Section 27A of the Act. In this case, according to the prosecution except the statement of the co-accused recorded under Section 67 of the NDPS Act, the co-accused no other material is adduced. As per the **Tophan Singh** Case, reported in **2021 4 SCC 1** under Section 67 statement recorded by the customs officer is inadmissible and as per the judgment of the Hon'ble Supreme Court reported in 2018 8 SCC 271, conviction only on the basis of the confession of the co-accused is not legally maintainable. In the said circumstances, this Court is inclined to hold that the prosecution failed to prove the charge under Section 29 (1) of the NDPS Act against the appellant/A3 and the conviction and sentence passed against him is liable to be set aside.

18. In the result, the judgment dated 07.01.2022 made in C.C.No.34 of 2018 passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act cases, Pudukottai is hereby set aside against A3 and the CrI.A(MD)No.69 of 2022 is allowed and the appellant is acquitted from all charges. Since the appellant/A3 is now confined in the central prison, he is directed to be released forthwith.



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18.1. Crl.A(MD)No.315 of 2022 filed by the accused Nos.1 and 2 stands dismissed. The conviction and sentence imposed against them in C.C.No.34 of 2018, dated 07.01.2022, by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act cases, Pudukottai is hereby confirmed.

14.02.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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1. The Additional District and Sessions Judge/Presiding Officer,
Special Court for EC & NDPS Act cases, Pudukottai.
2. The Intelligence Officer,
NCB, Madurai Sub Zone,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.A(MD)Nos.69 & 315 of 2022

K.K.RAMAKRISHNAN, J.

PJL/*sbn*

Predelivery Judgment made in
CRL.A.(MD)Nos.69 and 315 of 2022

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