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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	27.11.2024
Pronounced On	:	29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).Nos.137 & 16 of 2016 and 48 & 589 of 2022

and

CrI.M.P.(MD).No.11650 of 2022

CrI.A.(MD).No.16 of 2016

1.Picthaiyammal

2.Saroja

... Appellants

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.317 of 2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records connected with the judgment rendered by the learned Additional District and Sessions Judge for E.C and NDPS Act cases at Pudhukottai in C.C.No.46 of 2013 dated 29.05.2015 and set



aside the same.

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For appellant : Mr.S.Deenadhayalan

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

CrI.A.(MD).No.137 of 2016

1.Pitchaiamma

(Dismissed as not pressed)

2.Thenarasi

3.Saroja

(Dismissed as not pressed)

(A1 & A3 are dismissed as not pressed vide order dated 27.09.2021)

... Appellants

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.317 of 2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records connected with the judgment rendered by the learned Additional District and Sessions Judge for E.C and NDPS



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Act cases at Pudhukottai in C.C.No.46 of 2013 dated 29.05.2015 and set aside the same.

For appellant : Mr.Jana @ B.Janath Ahmed

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

CrI.A.(MD).No.48 of 2022

Karnan

... Appellant

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.317 of 2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records connected with the judgment rendered by the learned Additional District and Sessions Judge for E.C and NDPS Act cases at Pudhukottai in C.C.No.46 of 2013 dated 29.05.2015 and set aside the same.



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For appellant : Mr.R.Prakash

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).No.589 of 2022

Muthu Lakshmi

... Appellant

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.317 of 2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records connected with the judgment rendered by the learned Additional District and Sessions Judge for E.C and NDPS Act cases at Pudhukottai in C.C.No.46 of 2013 dated 29.05.2015 and set aside the same.

For appellant : Mr.R.Alagumani

For respondent : Mr.R.Meenakshisundaram
Additional Public Prosecutor



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COMMON JUDGMENT

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

2. The appellants/accused in C.C.No.46 of 2013 on the file of the learned Special Judge-Cum-Additional District Sessions Judge, Pudukkottai have filed these Criminal Appeals before this Court, challenging the conviction and sentence imposed against them in the impugned judgment dated 29.05.2015. The conviction and sentence is as follows:

<i>Sl. No.</i>	<i>Accused</i>	<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
1	A1 to A5	8(c) r/w 20(b)(ii)(C) of the NDPS Act	10 years R.I and to pay a fine of Rs.1,00,000/- in default to undergo 1 year R.I

3. According to the prosecution, on 01.07.2013, around 16.00 hours, P.W.1 received the secret information from the police officials about the



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illegal transportation of the Ganja in the auto bearing registration No.TN-65-7473. P.W.1 went to the occurrence place along with the Sub-Inspector of Police at about 03.55 pm. The Inspector of Police was also present in the occurrence place for patrol duty. At that time, the auto bearing registration No.TN-65-7473 came in a rash and negligent manner and without stopping the auto they zipped past and managed to stop by P.W.5 to P.W.7 and found huge quantity of ganja was found in 10 bags weighing 25 Kgs and the same was recovered by following the procedure stipulated in the NDPS Act. Thereafter, they arrested the accused and produced him before the Station and registered the case and then forwarded the accused along with the contraband to the learned Judicial Magistrate and the investigation was continued by investigating officer and he filed the final report after obtaining the chemical analysis report and also examined number of witnesses. The same was taken on file in C.C.No.46 of 2013 on the file of the learned Additional District and Sessions Judge for E.C and NDPS Act cases, Pudukottai.



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4. After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985 and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood for trial.

5. The prosecution, in order to prove its case, had examined 8 witnesses as P.W.1 to P.W.8 and exhibited 21 documents as Ex.P.1 to Ex.P.21 and marked six material objects as M.O.1 to M.O.8.

6. When the accused were examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against them, they denied the evidence as false and further stated that a false case was foisted against them. The accused neither produced any documents nor examined any witness on their side.



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7.The learned Trial Judge, considering the materials and circumstances found that the appellants/accused in C.C.No.46 of 2013 were guilty and passed the conviction and sentence as against the appellants as stated above.

8.Mr.S.Deenadhayalan, Mr.Jana @ B.Janath Ahmed, Mr.R.Prakash and Mr.R.Alagumani, learned counsel appearing for the appellants made the following submissions:

8.1.The conviction as against A1 and A2 under Section 8(c) r/w20(b)(ii)(c) of the NDPS Act, is not maintainable on the ground that even according to the case of the prosecution, they were not present in the scene of the occurrence and also no evidence was adduced to show that they were in exclusive possession of the contraband.

8.2.To prove A1's ownership of the auto, no documents were produced and P.W.2 to P.W.4 never disclosed about the sale of the said vehicle to A1 and they have also not produced any document to show their ownership prior to the transfer of the said auto in favour of A1.



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8.3.Ex.P16 was not signed by A1 and hence, the same is not admissible.

8.4.P.W.1, P.W.6 and P.W.7 made contradictory statements relating to the place of the occurrence and hence, their presence in the scene of the occurrence is highly doubtful and therefore, the recovery is also doubtful.

8.5.The deposition of P.W.1 about the taking of the samples is not corroborated by the evidence of the remaining witnesses, namely, P.W.6 and P.W.7.

8.6.Hetrogenic mixture of the samples is not legally valid.

8.7.The contraband was belatedly produced before the Special Court, which creates the doubt over the recovery of 25 Kgs of Ganja.

8.8.A2 to A4 already undergone more than 9 ½ years sentence of imprisonment and hence, their default sentence for non payment of fine amount has to be reduced.

9.Mr.R.Meenakshisundaram, learned Additional Public

Prosecutor Made the following submissions:

P.W.1/Village Administrative Officer, has no motive against any of



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the appellants and he has no reason to falsely implicate them in the occurrence. P.W.1 clearly deposed about the recovery and the arrest. The material portion of the said evidence is not cross examined and the said evidence is also corroborated by the evidence of the remaining evidence, namely, P.W.6 and P.W.7. Entire contraband was recovered and the samples without any tampering of seal and the remaining contraband without any tampering of the seal were produced before the learned Judicial Magistrate along with the accused and the same was in the proper custody and the same was produced at the time of the trial and identified by the witnesses. Even though charge is framed against A1 and A2 for the offence under Section 8(c) r/w 20(b) (ii)(c) of the NDPS Act, abundant material is available to convict them under Section 25 and 29 of the NDPS Act and the same is permissible while dealing the offence under Section 386 of Cr.P.C. From the conjoint reading of the evidence of P.W.2 to P.W.4, it is clear about the sale of the vehicle in favour of A1 and A1 instructed A2 to transport the contraband in the said auto. The hetrogenic method is permissible under the notification issued by the Central Government to take samples. The learned trial Judge has



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considered the above aspect and convicted the appellants for the charged offences and there is no infirmity in the judgment of the learned trial Judge. Under the NDPS Act, there is no ground to reduce the sentence and even for reducing the default sentence of imprisonment imposed for non payment of fine amount. Therefore, he seeks to dismiss the appeals.

10.This Court considered the rival submissions made by the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

11.The question in this case is whether the prosecution has established the case beyond reasonable doubt against the appellants and the learned trial judge's conviction and sentence imposed against the appellants can be sustained or not?

12.As per the evidence of P.W.1, P.W.5 to P.W.7, on 01.07.2013 at about 04.00 pm., when they were on patrol duty to conduct raid relating



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to illegal transportation of the illicit arrack in Kulithalai-Trichy Main road, they intercepted the auto bearing registration No.TN-65-7473 and the said auto without stopping, zipped past and the same was chased by P.W.1, P.W.5 to P.W.7 and stopped the said vehicle near Kulithalai dump yard. In the said auto, A3 to A5 travelled and tried to escape from the scene of the occurrence and they were caught hold and enquired and found that 25.00 Kgs of Ganja was found in 10 separate bags. The said contraband was recovered after following the procedure. Samples were taken in each bag and properly sealed and the remaining contraband was also properly sealed and mahazar was prepared under Ex.P4 and also the cell phone along with sim card was also recovered under Ex.P6. The voluntary confession statement of the accused also was recorded. From the confession statement of A3 to A5, the involvement of the accused Nos. 1 and 2 come to light and hence, A2 was arrested and since A1 was in the jail in connection with another crime, prisoner Transit warrant was obtained and custody was taken and her confessions also was recorded and she affirmed the ownership of the said auto. Thereafter, the investigating agency filed the final report and the same was taken on file



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in C.C.No.46 of 2013 on the file of the learned Additional District and Sessions Judge for E.C., and NDPS Act Case, Pudukkottai. After the trial, the learned Special Judge convicted the accused as stated above.

13.The learned counsel for A1 and A2 submitted that the charge was framed against all the accused under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act, for the possession of the contraband in the auto bearing registration No.TN-65-7473. There was no material produced to show that these appellants were present in the scene of the occurrence. The prosecution case is not that the contraband was in exclusive possession of the appellants. Only allegation against A1 is that while she was in prison, she conspired with A2 and remaining accused to procure and transport Ganja. A1 handed over the amount of Rs.30,000/- to A2 and instructed to procure Ganja and transport in her auto. A3 to A5 instructed to transport the same. To prove the said allegation, no evidence was adduced by the prosecution. The prosecution examined P.W.2 to P.W.4 to prove the factum of purchase of auto by A1. This Court perused the evidence of P.W.2 to P.W.4. P.W.3 deposed that A1 purchased the auto in the



presence of one Alageshan. But, they did not produce any documents either to show his ownership over the auto or transfer of the auto in the name of A1. The said Alageshan also was not examined. They did not disclose any date of transaction. The said date was material, in this case on the ground that A1 was inside the prison in connection with another crime number. P.W.2 deposed that he sold the auto to one Kumaresan and the said Kumaresan sold the same to P.W.3. He heard about the sale of the auto to A1 by the said Alageshan. For that purpose also, no documents were produced. P.W.4 was examined to prove the sale of the auto to one Ravikumar and he did not disclose anything about the accused and he was treated as hostile. From the above evidence, it is clear that none of the witnesses were able to give clear evidence to disclose the ownership of A1. Further, at the time of the occurrence, A1 was inside the prison. No documents were produced to show her involvement in the occurrence through electronic communication.

14. Only allegation against A2 is that he received the money from A1 and facilitated the offence. Except the confession of the accused, no



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other material is available to substantiate the same. In this case, no charge was framed either under Section 25 or 29 of the NDPS Act, and also no material was adduced to prove the said ingredients of either Section 25 or 29 of the NPDS Act. In the said circumstances, the appellants made out a case for the acquittal and this Court inclines to acquit them.

15.P.W.1/Village Administrative Officer, has deposed that when he and P.W.5 to P.W.7 were on patrol duty, A3 to A5 came in the auto bearing Registration No. TN-65-7473 in the Kulithalai- Trichy main road and without stopping the auto they overtook the vehicle in a rash manner and the same was intercepted by P.W.5 to P.W.7 and found huge quantity of ganja in the said auto in 10 bags and the same was recovered, and samples were taken and the remaining contraband also was sealed in a proper manner. He identified accused No.3 to 5 during the course of examination. His evidence is cogent and trustworthy. The evidence of P.W.1 is corroborated by the evidence of P.W.5 to P.W.7. The evidence of P.W.1, P.W.5 to P.W.7 are cogent and corroborated with each other on material particulars. They clearly deposed about the recovery of the



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contraband from the auto. When P.W.1 clearly deposed about the recovery, nothing was elicited to disbelieve his evidence. P.W.1's evidence relating to the taking of samples and other materials particulars was not challenged by cross examination. Therefore, his evidence is unchallenged relating to the recovery, taking of sample and packing of the remaining contraband. In view of the above evidence of P.W.1, P.W.5 to P.W.7 are cogent and without any infirmity relating to the recovery of contraband. Non-examination of the independent witness has no significance. It is the evidence of P.W.1, no independent witness was willing to come forward to act as attesting witness in the mahazar. In the said circumstances, this Court finds no merit in the contention of the appellants that the non-examination of the independent witness disprove the recovery of possession of the huge quantity of Ganja from A3 to A5. The learned counsel for A3 to A5 submitted that there are lot of infirmities in the prosecution evidence relating to the recovery of contraband. They specifically submitted that there is some contradiction between the evidence of P.W.1, P.W.5 to P.W.7 relating to the chasing of the auto. This Court perused the evidence, but, their evidence is clear that



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A3 to A5 travelled in the auto with contraband and when they intercepted, they attempted to escape from the place. At that time, they were chased and caught by P.W.5 to P.W.7. In the said circumstances, they have not furnished any explanation for the said fact during the course of the questioning under Section 313 of Cr.P.C.

16.The learned counsel also argued that there was some irregularities in taking samples. According to the prosecution, samples of 10grms Ganja were taken from each 10 pockets ie., 100 grms, and out of the total 01.00 Kg, two samples were taken and the same was marked as S1 and S2 and there was no objection for marking at the time of marking the said object. The chemical analysis report also was filed under Ex.P20 and Ex.P21. In the said report it is clearly mentioned that the seal was intact and there was no tampering of the seal. Further remaining contraband also was produced and there was no doubt about the safe custody of the remaining contraband marked as M.O.2 to M.O.6. Hence, in all aspect, the case of the prosecution against the appellant / A3 to A5 is clearly proved. Their exclusive possession of 25.00 Kgs of Ganja



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is proved in accordance with law and this Court finds no ground to interfere with the conviction against them under Section 8(c) r/w 20(b)(ii) (c) of the NDPS Act, for the possession of the 25.00 Kgs of Ganja.

17. The learned counsel for A3 to A5 submitted that they are inside the prison for more than 9 ½ of years and they seek reduction of default sentence of fine and in support of their contentions, relied the following judgement of this Court:

17.1. In the case of *Ramesh vs. The Superintendent of Customs* in *Crl.A.(MD).No.139 of 2014*

17.2. In the case of *V.Ravikumar @ Ravi @ Master @ Hubli Ravi @ Ravipaul @ Gubili Ravi vs. The intelligence Officer*, in 830 of 2018

17.3. In the case of *Mark Hendry @ John vs. The Intelligence Officer* in *Crl.A.No.735 of 2022*

18. In the result

18.1. *Crl.A.(MD).No.16 of 2016* in respect of the first appellant, namely, Pitchaiyammal (A1) is allowed and conviction and sentence



passed by the learned Additional District and Sessions Judge for E.C, and NDPS Act cases, Pudukottai, vide judgment dated 29.05.2015 in C.C.No. 46 of 2013, is hereby set aside and the appellant is acquitted from all charges framed against her. The bail bond executed by the said appellant shall stand terminated and fine amount, if any, paid by the said appellant shall be refunded to her.

18.2. CrI.A.(MD).No.16 of 2016 is partly allowed in respect of the second appellant, namely, Saroja/ A2 in the following terms:

(i) the conviction passed against the appellant for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, in C.C.No.46 of 2013, by the learned Additional District and Sessions Judge for E.C, and NDPS Act cases, Pudukottai, vide judgment dated 29.05.2015 is hereby confirmed.

(ii) the default sentence of imprisonment to undergo one years rigorous imprisonment alone

is modified into

“to undergo 15 days of rigorous imprisonment for the default in



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payment of fine amount for the offences under Sections 8(c) r/w 20(b)(ii) (c)of the NDPS Act;

18.3. CrI.A.(MD).No.137 of 2016 is allowed and conviction and sentence passed by the learned Additional District and Sessions Judge for E.C, and NDPS Act cases, Pudukottai, vide judgment dated 29.05.2015 in C.C.No.46 of 2013, is hereby set aside and the appellant is acquitted from all charges framed against the appellant. The bail bond executed by the said appellant shall stand terminated and fine amount, if any, paid by the said appellant shall be refunded.

18.4. CrI.A.(MD).No.48 of 2022 are partly allowed in the following terms:

(i)the conviction passed against the appellants for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c)of the NDPS Act, in C.C.No.46 of 2013, by the learned Additional District and Sessions Judge for E.C, and NDPS Act cases, Pudukottai, vide judgment dated 29.05.2015 is hereby confirmed.



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(ii) the default sentence of imprisonment to undergo one years rigorous imprisonment alone

is modified into

“to undergo 15 days of rigorous imprisonment for the default in payment of fine amount for the offences under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act;

18.5. CrI.A.(MD).No.589 of 2022 is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, in C.C.No.46 of 2013, by the learned Additional District and Sessions Judge for E.C, and NDPS Act cases, Pudukottai, vide judgment dated 29.05.2015 is hereby confirmed.

(ii) the default sentence of imprisonment to undergo one years rigorous imprisonment alone

is modified into

“to undergo 15 days of rigorous imprisonment for the default in payment



of fine amount for the offences under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act;

Consequently, connected Miscellaneous Petition is closed.

29.11.2024

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

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Note: Issue order copy on 02.12.2024



To

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- 1.The Additional District and Sessions Court for E.C
and NDPS Act cases,
Pudukottai
- 2.The Inspector of Police,
Kulithalai Police Station,
Karur District.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J.

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Crl.A.(MD).Nos.137 & 16 of 2016 and 48 & 589 of 2022

29.11.2024