



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No. 570 of 2022

and

CrI.M.P.(MD).No.11269 of 2022

Mahendran @ Auto Mahendran

... Appellants/Accused No.1

Vs.

State, rep. by
The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
(Crime No.02 of 2021)

... Respondent/Complainant

Prayer : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records in C.C.No.240 of 2021 dated 06.08.2022 on the file of the learned II Additional Special Court for EC and NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Jegadeesh Pandian

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

JUDGMENT

The appellant/Accused No.1 in C.C.No.240 of 2021, on the file of the



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learned II Additional Special Court for EC and NDPS Act Cases, Madurai, filed this appeal challenging the conviction dated 06.08.2022 and sentence to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo one year simple imprisonment passed against him for the offences under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.

2.The brief facts of the case as follows:

On 02.01.2021, at about 10.15 a.m., P.W.2 received secret information about the illegal possession of Ganja at Kalimuthu Nagar, in the Motor Room of Kalugu's farm. He reduced the same in writing as per the requirement of the law under Ex.P4 and informed the same to P.W.3/ the Inspector of the Police and proceeded to search after getting the direction from P.W.3. On the same day at 10.30 a.m., P.W.1 received the written authorisation of P.W.3. Thereafter, P.W.3 asked P.W.1 and two constables to go over to the occurrence place. The informer identified the person standing in the motor room. On seeing the police party, the appellant jumped out of the said motor room along with white sack and tried to escape from the scene of occurrence. At that time, he was nabbed by P.Ws.1 and 2 and his team and introduced them as a police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted



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officer as required under Section 50 of the NDPS Act. The appellant consented to conduct the search by the officer himself and hence, P.W.2 conducted search and found that in the white sack, there were 15 parcels. They opened one of the parcels and found that there was Ganja. Thereafter, he seized all the bags and also opened all the covers and transferred them into the Polyethylene bag and took two samples under S1 and S2 and the remaining contraband was also properly sealed under Ex.P.1. According to P.W.1, they weighed the contraband and found the quantity to be 29.100 kgs. Thereafter, he arrested the appellant and he also gave a confession. The appellant sustained some injury, when he tried to jump out from the motor room. Hence, he was brought to a private hospital and preliminary treatment was given. Then, he was brought to the police station and FIR was registered in Crime No.2 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. After completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.3 conducted the investigation and filed the final report. After completing the investigation, the same was taken on file in C.C.No.240 of 2021, by the learned II Additional Special Court for EC and NDPS Act Cases, Madurai. The learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the



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accused. The accused pleaded not guilty and he stood for trial.

3.To prove the case, the prosecution examined P.W.1 to P.W.3 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and produced 4 material objects as M.O.1 to M.O.4. The learned trial Judge questioned the accused under Section 313 Cr.P.C., proceedings by putting the incriminating evidence available from prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the appellant, no witness was examined and no documents were produced.

4.The learned trial Judge, on considering the oral and documentary evidences, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant has preferred this appeal.

5.The learned counsel for the appellant made the following submissions:

5.1.The samples were not taken from each of the 15 bags. The Honourable Supreme Court in the case of *Union of India Vs. Bal Mukund* reported in 2009



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(12) *SCC 161*, specifically held that the samples are to be taken from the individual bag. But, it has not been complied with as per law and hence, there is a basic infirmity in drawing the samples and the said infirmity raises serious doubt about the recovery.

5.2. The ownership of Kalugu's farm was not established to prove that the said land belongs to him. Further, there is a difference between the “SHO Seal” and “Police Button Seal”. The difference between the seals create a suspicion regarding the manner of the seizure and package of the sample items and the remaining contraband. The remand was made in the hospital. There was no explanation adduced on the side of the prosecution, as to how the appellant was admitted in the hospital? Hence, there is a doubt over the occurrence as alleged by the prosecution. In the said circumstances, he seeks for the acquittal.

5.3. The learned counsel further submitted that the Court below failed to consider the specific stand of the appellant, during his questioning under Section 248(2) of Cr.P.C., and 313 of Cr.P.C., that he was illegally taken by the respondent Police and beaten up resulting in fracture of his leg and was admitted in the private hospital. There was no recovery as alleged by the prosecution. The



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same was corroborated by the remand report of the learned Judicial Magistrate. Further, he specifically pleaded that he had not disclosed the above fact at the time of the remand because his family members were kept under illegal custody by the police officer and also he was threatened that if he disclosed the above fracture caused by the police officer, the family members also will be roped in false cases. The above was not properly considered by the learned trial Judge. Hence, he seeks to consider the above defence along with other materials.

5.4.He further submitted that there is non compliance of Section 52(A) of the NDPS Act on the basis of the latest pronouncement of the Honourable Supreme Court judgment. Even though the same was brought to the notice of the learned trial Judge, the same was not considered. Hence, he seeks for acquittal.

6.The learned Additional Public Prosecutor appearing for the respondent submitted that the defence of the accused that his family members were already confined in the illegal custody of the Police officer and the appellant's leg was fractured by the Police officer and that he was threatened, was not disclosed before the learned Judicial Magistrate, at the time of the remand. His



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explanation under Sections 313 Cr.P.C and 248(2) of Cr.P.C., is an after thought.

In order to escape from the above offence, he has taken the said plea. To prove the same, no material is available on record.

6.1. The learned Additional Public Prosecutor further submitted that as per the notification of the Central Government, for taking samples, options are available to the investigating agency, **(i)** The investigating agency can take the samples in each packet **(ii)** or all can be clubbed together or mixed together. In this case, as per the evidence of P.W.2, he exercised the second option and taken the sample and mixed all the contraband from each 15 bags in accordance with law. In the said circumstances, the judgment relied upon by the appellant is not applicable to the present facts of the case. The non compliance of 52(A) of the NDPS Act is concerned, in this case, samples were properly taken as per the notification and separately sealed and packed and remaining contraband also packed and produced before the jurisdictional Magistrate immediately along with the appellant, at the time of the remand. Therefore, the entire contraband was produced as a physical evidence before the trial Court. The same was identified by P.Ws.1 and 2. During questioning under Section 313 Cr.P.C., there was no explanation relating to the possession of huge quantity of the contraband.



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Therefore, the appellant had not dispelled the presumption, as per Section 35 of the NDPS Act.

6.2.The learned Additional Public Prosecutor further submitted that there is no material discrepancy regarding “SHO Seal” and “Police Button Seal”. The same will not affect the evidence of P.Ws.1 and 2, when the contraband was produced before the trial Court immediately, after the occurrence. The learned Additional Public Prosecutor further submitted that the appellant tried to escape from jumping out of the motor room of the Kalugu's farm and hence, he sustained injury and the same was revealed by P.Ws.1 and 2. Therefore, they gave preliminary treatment at the private hospital and brought the appellant to the police station and registered the FIR and before making remand, he was produced before the Government Hospital. In the Government Hospital, he was admitted, due to the nature of the injury sustained in leg. Therefore, he has presently projected as if Police officer attacked him and he sustained injury on his leg. He has not disclosed the same at the time of the remand. Therefore, the contention of the petitioner's counsel that the respondent foisted a false case is not correct and the same was stated in order to escape from the legitimate prosecution under the NDPS Act.



7.This Court considered the rival submission and also perused the records and the impugned judgment and the precedents relied upon by the appellants.

8.Now the question in this case is that whether the conviction and sentence passed against the appellants by the Court below under Section 8(c) r/w 20(b)(ii) (C) of NDPS Act is in accordance with law?

9.P.W.2 received the information about the illegal possession of the huge quantity of Ganja through informer. He recorded the said statement as per the requirement of Section 42 of the NDPS Act, under Ex.P.4 and he informed the same to P.W.3. He passed the following detailed order:

சி-3எஸ்.எஸ்.காலனி காவல் நிலைய சார்பு ஆய்வாளர் திரு.விஜயகுமார் ஆகிய தங்களுக்கு கிடைக்கப்பெற்ற தகவலை தணிக்கை செய்து வர நிலைய அலுவலில் இருக்கும் த.கா.521 திரு.சரவணக்குமார் மற்றும் மு.நி.கா.3810 திரு.ஜார்ஜ் டிமிட்ரோ, மு.நி.கா.3793 திரு.நாகசுந்தர் ஆகியோர்களுக்கு வழக்குக்கு தேவையான உபகரணங்களை எடுத்துக் கொண்டு சம்பவ இடம் சென்று தணிக்கை செய்து நடவடிக்கை எடுத்த அறிக்கை சமர்ப்பிக்க உமக்கு உத்தரவு வழங்குகிறேன்.

10.After following the procedure under Section 42 of the NDPS Act, he



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along with other officers and informer went to the scene of the occurrence. In the scene of the occurrence, the informer identified the motor room in Kalugu's Garden. On seeing the arrival of P.W.2 and other persons, the appellant jumped off from the motor room and he tried to escape from the scene of the occurrence along with the contraband. At that time, police team nabbed him and introduced him as the police officer and asked to exercise his right either to be searched before the Gazetted officer or Judicial Magistrate, as per Section 50 of the NDPS Act under Ex.P1. Even though Section 50 of NDPS Act, is not applicable to this case, the same was complied with.

11. Plea of the non-compliance of Section 52A of the NDPS Act caused failure of justice.

11.1. The conjoined reading of Sections 41 to 44, 55 and 57 of the NDPS Act, shows that every authorised officer from the jurisdictional Police Station, the department of Central Excise, Narcotic Customs, Revenue Intelligence or any other department of Central Government etc., has reason to believe from personal knowledge or information given by any person and the same was reduced in writing that any Narcotic drug or Psychotropic substances or controlled substance in respect of which, offence punishable under this Act has



been committed, they are entitled to search and seize the contraband. They are called “seizure officer”. They shall arrest the accused and produce the accused along with seized contraband to his immediate Superior of nearest police station or officer empowered under Section 53 of the Act. The said officers shall take necessary measure as may be necessary for the disposal, as per Section 52 of the Act. The said report shall be made within 48 hours from the time of either arrest or seizure. Under Section 55, the officer in charge of police station shall take charge of the contraband and keep in safe custody pending orders of the Magistrate. He also shall allow the said seizure officer to take sample of such contraband and seal the said sample with seal of officer in charge of Police Station. The Central Government issued a notification with guidelines to follow the procedure to take the sample from the recovered contraband and to keep the remaining contraband.

11.1.1. That being the arrangement of the Section and the scheme of the Act, the Government have brought amendment in the year 1989 vide Act 2 of 1989 with the following statement of objects and reasons:

Amendment Act 2 of 1989-Statement of Objects and Reasons- *In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill-over*



from such traffic has caused problems of abuse and addiction. The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishments for drug trafficking offences. Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drugs offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt.

2.A Cabinet Sub-Committee which was constituted for combating drug traffic and preventing drug abuse, also made a number of recommendations for strengthening the existing law. In the light of the recommendations of the Cabinet Sub-Committee and the working of the Narcotic Drugs and Psychotropic Substances Act, in the last three years, it is proposed to amend the said Act. These amendments, inter alia, provide for the following:-

(i) to constitute a National Fund for Control of Drugs Abuse to meet the expenditure incurred in connection with the measures for combating illicit traffic and preventing drug abuse;

(ii) to bring certain controlled substances which are used for manufacture of Narcotic Drugs and



Psychotropic Substances under the ambit of Narcotic Drugs and Psychotropic Substances Act and to provide deterrent punishment for violation thereof;

(iii)to provide that no sentence awarded under the Act shall be suspended, remitted or commuted;

(iv)to provide for pre-trial disposal of seized drugs;

(v)to provide death penalty on second conviction in respect of specified offences involving specified quantities of certain drugs;

(vi)to provide for forfeiture of property and a detailed procedure relating to the same ; and

(vii)to provide that the offences shall be cognizable and non-bailable.

11.1.2.Therefore, “to provide for pre-trial disposal of the seized contraband”, the 52 A was inserted on 29.05.1989, which 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



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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 4 [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 4 [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 4 [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 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and



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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 5 [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 1 [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.]



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11.1.3.Section 52 A aims at “*pre trial disposal of seized contraband*” with the sole object of avoiding pilferage of contraband and retring to the marketplace for recirculation as it is vulnerable to theft and substitution, against the normal rule of destruction of the material after conclusion of the trial under Section 452 Cr.P.C., The said provision intends to authorise the post recovery procedure to dispose the seized contraband by the officer mentioned Section 52 to prove the case of the possession of the contraband by taking sample, by preparing inventory in the presence of the judicial Magistrate. Therefore, the prosecution is not prevented to prove the case of the possession of the contraband through legal evidence of the recovery witnesses. Once the possession of the contraband is proved, the legal presumption under Section 54 comes into play. Then, the culpable mental state on the part of the accused can be pressed into service under Section 35 of the Act. Therefore, in a similar contention raised before the Hon'ble Supreme Court in the case of ***State of Punjab v. Makhan Chand***, reported in ***(2004) 3 SCC 453***, the Hon'ble Supreme Court has rejected the same with the following findings:

“9. Learned counsel for the respondent-accused relied on certain standing orders and standing instructions issued by the Central Government under Section 52-A(1) which require a particular procedure to



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be followed for drawing of samples and contended that since this procedure had not been followed, the entire trial was vitiated.

10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore,



Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.”

11.1.4.In the case of ***Kallu Khan v. State of Rajasthan***, reported in **2021**

SCC OnLine SC 1223 it has been held as follows:

“13. At this state, the argument advanced by the appellant regarding non-production of contraband in the court due to which benefit of doubt ought to be given to accused, is required to be adverted to. In the case of State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649, this Court held that when the seizure of material is proved on record and is not even disputed, the entire contraband material need not be placed on record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in the case of Mohan Lal (supra) in which case the directions were given to be followed on administrative side. However, in the facts of the case, the said judgment is not of any help to appellant.

9.10. The Hon'ble Supreme Court held that even non-



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*production of the entire contraband before the Court is not fatal when the seizure was proved and the sample taken from the said seized contraband is proved. In this aspect, it is relevant to the judgment of the Hon'ble Supreme Court in **Than Kunwar v. State of Haryana, (2020) 5 SCC 260**: (30. The Court also went to hold in **Sahi Ram [State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85]** that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact. This Court held as follows : (SCC pp. 657-58, paras 15-16 & 18)*

*“15. It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the court ought to result in acquittal of the accused. However, in none of the aforesaid cases the said submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from the decision of this Court in **Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028]** , apart from the aforesaid submission other facets of the matter also weighed with the court which is evident from paras 7 to 9 of the decision. Similarly in **Ashok [Ashok v. State of***



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M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized (para 12) were also relied upon while extending benefit of doubt in favour of the accused. Similarly, in Vijay Jain [Vijay Jain v. State of M.P., (2013) 14 SCC 527 : (2014) 4 SCC (Cri) 276] , the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in Vijay Pandey [Vijay Pandey v. State of U.P., (2019) 18 SCC 215] , again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.

16. It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the court has singularly been found to be sufficient to grant the benefit of acquittal.

18. If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be



produced before the court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kg that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.”

31. In the facts of this case, no doubt the contraband article weighed 6 kg 300 gm. A perusal of the judgment of the trial court does not appear to suggest that the appellant had taken the contention regarding non-production of the contraband before the trial court.

11.2. From the above discussion, it is clear that Section 52 A of the NDPS Act deals with disposal of the seized contraband and it is not related to the seizure from the scene of the occurrence. Therefore, this Court is unable to accept the submission of the learned counsel for the appellant that the failure on the part of the investigating agency to destruct the contraband as per the procedure contemplated under Section 52A of the NDPS Act is a ground to



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acquittal without going into the legal evidence available to prove the possession of the contraband, seizure of the contraband, the arrest of the accused, taking of the samples, forwarding of the samples and the remaining contraband along with accused immediately after the arrest to the Court and the production of the remaining samples, chemical analysis report and the remaining contraband physically as a material object. Once the above facts are proved through the evidence, the presumption under the Act will come. Therefore, the interpretation to Section 52 A of the NDPS Act, is made to achieve the object of NDPS Act.

11.3. The drugs are made to cure the illness and the diseases and to alleviate the pain during ailment. But, the People misused the same for illegitimate purpose and therefore, drug abuse has become a social problem. The NDPS Act was originally brought in the year 1985. Subsequently, to make it stringent, an amendment was brought in the year 1989 with the object stated supra.

11.4. According to the data, 1.58 Crores children aged between 10 to 17 years are addicted to drugs. The effect of the drug abuse includes disease transfusion, criminal behaviour, social disorder and even death and suicide.



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According to the data, the suicide as a result of a drug abuse has increased to unimaginable and alarming percentage.

Year	Number of suicide due to drug abuse
2011	3658
2016	5199
2017	6705
2018	7193
2019	7860
2021	10560

ie., As per the data available from the NCRB, death by suicide attributed to drug abuse and alcohol addiction continue to increase at the rate of atleast one death in every hour. Further, as per the data, in the year 2018, due to the drug over dose, 875 deaths has occurred and in the year 2019, 704 deaths. Therefore, there is an alarming situation, which required immediate action. Therefore, Government brought in Section 52A with object of disposal of a drugs immediately after the seizure. Therefore, Section 52 A should be so interpreted to avoid unworkable or impracticable results. The said principle was fortified in the case of *Sheffield City Council vs. Yorkshire Water Services Ltd.*, reported in *(1991) 1 WLR 58 : (1991) 2 All ER 280]* , *WLR at page No.71*, and held as follows:

“Parliament is taken not to intend the carrying out of its



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enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. ‘... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society’.”

11.4.1. The Hon'ble three benches of Supreme Court reiterated the said principle by interpreting Section 50 of the Act in the case of the ***State of H.P. v. Pawan Kumar***, (2005) 4 SCC 350 : 2005 SCC (Cri) 943 : 2005 SCC OnLine SC 714 at page 363

18. *There is another aspect of the matter, which requires consideration. Criminal law should be absolutely certain and clear and there should be no ambiguity or confusion in its application. The same principle should apply in the case of search or seizure, which come in the domain of detection of crime. The position of such bags or articles is not static and the person carrying them often changes*



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the manner in which they are carried. People waiting at a bus-stand or railway platform sometimes keep their baggage on the ground and sometimes keep in their hand, shoulder or back. The change of position from ground to hand or shoulder will take a fraction of a second but on the argument advanced by learned counsel for the accused that search of bag so carried would be search of a person, it will make a sharp difference in the applicability of Section 50 of the Act. After receiving information, an officer empowered under Section 42 of the Act, may proceed to search this kind of baggage of a person which may have been placed on the ground, but if at that very moment when he may be about to open it, the person lifts the bag or keeps it on his shoulder or some other place on his body, Section 50 may get attracted. The same baggage often keeps changing hands if more than one person are moving together in a group. Such transfer of baggage in the nick of time when it is about to be searched would again create practical problem. Who in such a case would be informed of the right that he is entitled in law to be searched before a Magistrate or a gazetted officer? This may lead to many practical difficulties. A statute should be so interpreted as to avoid unworkable or impracticable results. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:



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“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong.”

*20. As pointed out in State of Punjab v. Baldev Singh [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080] drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nations Conventions Against Illicit Trafficking in Narcotic Drugs, which the Government of India has ratified. **It is, therefore, absolutely imperative that those who indulge in these kind of nefarious activities should not go scot-free on technical pleas** which come handy to their advantage in a fraction of a second by slight movement of the baggage, being placed to any part of their body,*



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which baggage may contain the incriminating article.

11.5. Before the implementation of the Narcotic Drugs and Psychotropic Substance (Seizure, Storage, Sampling and disposal) Rules 2022 which commenced from 23 December 2022, not even Section 52A of the NDPS Act demanded taking of samples at the spot. The Notification No.1/1989 prescribed procedure to take samples, seizure and the disposal. The authorities has strictly followed the procedure during the course of taking samples, seizure and produced before the Court. Therefore, considering the drug menace which has been causing pernicious effect to large Sections of society namely, life of the youths and innocent persons, the unworkable interpretation has to be avoided. Hence, this Court holds that when physical production of the contraband and sealed samples are duly made before the Court, the Court has to take into account the same without going into the issue of the non-compliance of the post seizure procedure, which is intended for avoidance of re-circulation, in order to convict the accused for the possession of the contraband against the law.

11.6. From the above reading of the “*Mohanlal case*” I II III, it is clear that Section 52 A prescribed procedure to be followed post seizure of the contraband to ensure prompt destruction of the contraband so that seized materials may not



be misused. The said direction has been issued only on considering the submission of the prosecution that seized contraband were disposed of without taking samples and preserving the remaining contraband as per the Central Notification No.1/89 ie., on the basis of the specific observation in Paragraph No.13 of Mohanlal case III that *“except Directorate of Revenue Intelligence, most the States, however claim that no samples are drawn at the time of the seizure. The DRI alone claims that sample are drawn at the time of seizure.”*

11.6.1.The Hon'ble Supreme Court in Paragraph No.12 of the *Mohanlal Case (mohanlal III- reported in 2016 (3) SCC 379)* has held as follows:

Seizure and sampling

12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government has in exercise of that power issued Standing Order No. 1 of 1989 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10-5-2007 and the other dated 16-1-2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes



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the procedure for conducting seizures. Para 2.2 of Standing Order No. 1 of 1989 states that samples must be taken from the seized contraband on the spot at the time of recovery itself. It reads:

“2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.”

13. Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are



proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

11.6.2.The original facts of Mohanlal Case (Mohanlal Case -I reported in 2012 (7) SCC 712), have made it clear that the Union of India has preferred appeal against the acquittal. The High Court dismissed the appeal on the ground that the prosecution failed to prove the seizure of the contraband beyond reasonable doubt and hence, the prosecution case of destruction of the contraband without taking sample as per Section 52A of NDPS Act, cast doubt over the prosecution case. In the said appeal, considering the re-circulation of the seized contraband, the Hon'ble Supreme Court called the States to furnish the details of the seizure, storage, disposal/destruction particulars. Before issuing the said direction, the Hon'ble Supreme Court has observed as follows in Paragraph No.11 of the judgment in the case of *Union of India v. Mohanlal* reported in 2012 7 SCC 712 **at page 715**

11. We find considerable merit in the submissions made by Mr Sinha. The problem is both widespread and formidable. There is hardly any State in the country today which is not affected by the production, transportation,



marketing and abuse of drugs in large quantities. There is in that scenario no gainsaying that the complacency of the Government or the officers dealing with the problem and its magnitude is wholly misplaced. While the fight against production, sale and transportation of the narcotic drugs and psychotropic substances is an ongoing process, it is equally important to ensure that the quantities that are seized by the police and other agencies do not go back in circulation on account of neglect or apathy on the part of those handling the process of seizure, storage and destruction of such contrabands. There cannot be anything worse than the society suffering on account of the greed or negligence of those who are entrusted with the duty of protecting it against the menace that is capable of eating into its vitals. Studies show that a large section of the youth are already victims of drug abuse and are suffering its pernicious effects. Immediate steps are, therefore, necessary to prevent the situation from going out of hand.

11.6.3. Thereafter, after considering the data, the Hon'ble Supreme Court issued a direction in the case of ***Union of India v. Mohanlal***, reported in **(2016) 3 SCC 379**, which reads as follows:



31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

11.7.The above direction contains two parts:

(i) No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act.

(ii) The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as



discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paragraph Nos.15 to 19 of this order.

11.8.Both the directions relate to the procedure to be followed after the seizure. The said direction was issued on finding that there was no compliance of the procedure of taking sample at the occurrence place at the time of the seizure as per the Central Government Notification No.1/1989. Therefore, the intention of the guidelines issued by the Hon'ble Supreme Court is that in case of failure to take sample and to prove the case of the seizure, the prosecution has final opportunity to produce the entire contraband and take the sample in the presence of the learned Judicial Magistrate upon making the application and cause destruction of the contraband. From the above, it is clear that the compliance of the above direction issued by the *Mohanlal Case No.II*, to take inventory is the post seizure procedure to prevent the recirculation of the contraband. In the said circumstances, in the case wherever the contraband was seized after taking the samples as per the Notification No.1/1989 and forwarded to the competent officer as per Section 52 and the accused along with the seized contraband are produced before the competent Court and the competent Court received the



contraband and issued a direction to keep the contraband in proper custody and the same has been properly supervised and the same has been also produced before the trial Court at the time of the trial as a material object, as a physical evidence, the same cannot be brushed aside on the ground that the investigating agency violated the second part of the direction of the ***Mohanlal Case No.II***, by not disposing of the seized contraband by making the application under Section 52A of NDPS Act.

11.9.The Mohanlal Case, is applicable only to the cases where there is a failure of physical production of the contraband as a material object and not in all circumstances. The same was considered by the Hon'ble Supreme Court before and after the Mohanlal case and the Hon'ble Supreme Court has held that the said non-compliance is not fatal to the prosecution when the prosecution proved the factum of seizure of the contraband beyond reasonable doubt and also proved the seized materials by producing the same before the trial Court as a material object and identified the same, through the material witnesses as per law.



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11.10. Now this Court adverts to the facts of the present case whether the prosecution proved the possession of the contraband, seizure and production of the contraband before the Court in accordance with the provision of the NDPS Act and the Notification No.1/1989 ?

11.11. To address the issues, it is relevant to extract the various provisions of the NDPS Act:

Section 52 of the NDPS Act	Section 55 of the NDPS Act
Disposal of persons arrested and articles seized.—(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest. (2) <i>Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate</i> by whom the warrant was issued. (3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to— (a) the officer-in-charge of the nearest police station, or (b) the officer empowered under section 53. (4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, <i>take such measures as may be necessary for the disposal according to law of such person or article.</i>	Police to take charge of articles seized and delivered.— An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, <i>all articles seized</i> under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or <i>to take samples of and from them</i> and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

From the reading of Section 52 of the NDPS Act, it is clear that the Investigating officers shall arrest and seize the contraband. The arrestee and the seized contraband shall be forwarded to the Magistrate without unnecessary delay. The



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arrestee and the seized articles should also be forwarded to the officer in charge of nearest police station or the officer empowered under Section 53 of the NDPS Act. The said police officers to whom the arrestee and the seized articles are forwarded are the officers under Sub Sections 2 and 3 of Section 52 of the NDPS Act, who have to take charge of and take such measures as may be necessary for the disposal according to law of such persons or article. Disposal of the arrestee has been made through the remand by the Magistrate. The disposal of the seized article has been made through entrusting the custody to the officer mentioned in Section 55 of the NDPS Act.

11.11.1. The officer who has received the seized article from the officer mentioned in the NDPS Act is to act as per Section 55 of the NDPS Act and should take charge of the said seized articles and keep in the safe custody either by affixing the seal to such articles or allow to take samples of and from them and all sample so taken shall also be sealed with a seal of office in charge of police station, till the orders of the Magistrate. Therefore, from the reading of Sections 52 and 55 of the NDPS Act, the disposal of the seized articles by the ground level officers ends with entrustment of the same with the officer mentioned in Section 55 of the NDPS Act. The officer mentioned in Section 55



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of the NDPD Act, is duty bound to keep safe custody of the properties till the orders of the Magistrate. This original position of the Act before the incorporation of Section 52A of the NDPS Act, ie., 29.05.1989, is that the Union Government had issued the notification No.1/1989, in the form of instruction to the investigating officer to follow the procedures during the course of the arrest and seizure of the articles with the accused person.

11.12. Since the question of the compliance of the procedure is factual aspect and only in the case of the non compliance which cause failure of justice and creates doubt over the prosecution case over the recovery, this Court is duty bound to consider the same. On perusal of the entire material and other records and careful appreciation of the deposition of the witnesses and the explanation furnished by the appellant during the course of the questioning under Section 313 of Cr.P.C., this Court finds that the appellant never raised the said plea during the entire course of the trial. But, the learned counsel argued that the non-compliance amounts to failure of justice, and this Court is duty bound to see any failure of justice has occurred. In this case, the bag was seized by the Police officer, which contained 15 bags of Ganja. P.W.2 mixed all the contraband and taken the samples S.O.1 and S.O.2 and packed the remaining contraband. He



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also weighed the remaining contraband and packed it separately. Thereafter, they arrested the accused and the accused gave the confession and he admitted that he and his friend purchased the said contraband from unknown person and A2 was also implicated in this case. The said samples of the contraband was produced along with *“following Form 95 under Ex.P.9 before the learned Judicial Magistrate on the date of remand of accused itself”* and the same was verified by the learned Judicial Magistrate and directed to be produced before the Special Court without any delay.



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EC 240/21

Moi to 4

PN2

16/4/22

Ep 9

PN 3

23/4/22

[Signature]
Judge

[Signature]
Judge

Retel

for due to property -
for due to property -
NDPS Act. Madras

[Signature]
03/12

R.P. No. 100/2021
Property Returned and not to
Police for state custody

ADDITIONAL DISTRICT JUDGE
PRINCIPAL SPECIAL COURT
NDPS ACT CASES, MADURAI

சென்னை, 16-04-2022
தமிழக உயர் நீதிமன்றம், சென்னை
பிரதான நீதிமன்றம், சென்னை
தமிழக உயர் நீதிமன்றம், சென்னை
தமிழக உயர் நீதிமன்றம், சென்னை
தமிழக உயர் நீதிமன்றம், சென்னை

[Signature]
HCS/85



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During the course of trial, the remaining contraband was produced and marked as M.O.3. The remaining sample Ganja returned from the chemical lab after chemical analysis is marked as M.O.1, another sample was marked as M.O.2. Even 15 Kakki covers were also marked as M.O.4. Therefore, the entire contraband was produced. In the said circumstances, the reliance placed by the learned counsel for the appellant for non compliance of 52(A) is not acceptable. In the said case, it is the specific case of the prosecution that the entire contraband was disposed of. Further on facts, the reliance placed on ***Bothilal Vs. Intelligence Officer, NCB***, reported in ***2023 SCC Online SC 498***, is not applicable to the present case.

12.It is the specific case of the prosecution that the appellant sustained injury at the time of jumping from the building. During the remand before the Judicial Magistrate, he has not disclosed anything about the attack made by the police officer, which is first material circumstance. It is the material time when the appellant is expected to make such a complaint. He has not done so. For which, he gave another explanation that the police officer illegally detained the entire family members. For that purpose, he has not examined anybody to show that his family members that they were illegally detained. Therefore, the said



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defence is an after thought as rightly argued by the learned Additional Public Prosecutor. This Court is unable to accept the said explanation given by the defence.

13.Regarding some discrepancy about the seal, this court perused the documents and other materials produced before the trial Court. The said discrepancy has not affected the prosecution case, when the evidence of the P.W. 1 and P.W.2 are cogent and the recovery was clearly spoken by them. It was submitted by the learned counsel for the appellant that no independent witnesses were examined. It is well settled principle that there is no necessity to examine independent witnesses. Hence, in all aspects, the prosecution proved the case beyond reasonable doubt and the appellant has not established the defence that false case was foisted through legal evidence. It is well settled principle that once the prosecution proved the possession of the huge commercial quantity of the Ganja, the presumption arises under Section 54 of the NDPS Act. The same shall be rebutted by the strict compliance of Section 35 of the NDPS Act. The Section 35 of the 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.

14. As per Section 35 of the NDPS Act, it is not the duty of the appellant to plead the defence and also prove the same beyond reasonable doubt. In this case, except pleadings no evidence has been adduced by the appellant against the prosecution to show that a false case was registered by the Police officer against him. Hence, in all aspects, this Court finds no merit in the contention of the appellant and hence, this petition deserves to be dismissed. The learned counsel for the appellant made the submission that his economic condition is not up to the mark and hence, he seeks for reduction of default sentence. This Court considered the said submission and also considering the incarceration of the petitioner, inclined to reduce the default sentence from one year to six months.



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15. Accordingly, this Criminal Appeal is dismissed and the conviction and sentence imposed by the learned II Additional Special Court for EC and NDPS Act Cases, Madurai, in C.C.No.240 of 2021 dated 06.08.2022 is hereby confirmed. The bail bond granted shall be terminated, the trial Court is directed to secure the accused and confine in prison to undergo remaining period of imprisonment. Consequently, the connected criminal miscellaneous petition is closed.

14.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

vsg/sbn

Note: Issue Order Copy on 05.11.2024



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1. The learned II Additional Special Judge
for EC and NDPS Act Cases,
Madurai.
2. The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

vsg/sbn

CRL.A(MD).No. 570 of 2022
and
CrI.M.P.(MD).No.11269 of 2022

14.03.2024