



CRL.A(MD).Nos.614, 616 and 629 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Delivered on : 14.03.2024

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.614, 616 and 629 of 2022

Meenakshi Sundharam @ Sundhar	... Appellant/Accused No.2 in CrI.A.(MD).No.614 of 2022
Subhash Chandra Bose @ Bose	... Appellant/Accused No.1 in CrI.A.(MD).No.616 of 2022
Sakthivel	... Appellant/Accused No.3 in CrI.A.(MD).No.629 of 2022

Vs.

State represented by
The Inspector of Police,
Keeraithurai Police Station,
Madurai City.
Cr.No.1174 of 2020

... Respondent/Complainant
(In all appeals)

COMMON PRAYER: These Criminal Appeals are filed under Section 374(2) of Cr.P.C. to call for the records and set aside the conviction and sentence passed by judgment dated 18.08.2022 in C.C.No.279 of 2021, on the learned Principal Special Court for NDPS Act cases, at Madurai and acquit the appellants herein.



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

For Appellant : Mr.G.Karuppasamy Pandian
(in all cases)

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor
(in all cases)

COMMON JUDGMENT

These appeals have been filed to set aside the conviction and sentence passed by the learned Principal Special Court for NDPS Act cases, at Madurai, in C.C.No.279 of 2020 dated 18.08.2022.

2.Since the appellants in all the appeals are arrayed as accused No.1 to 3 in the same crime number, these appeals are taken up together for hearing and disposed of by way of this common judgment.

3.According to the prosecution, the appellants and other five accused are said to have committed offence under Sections 8(C) r/w 20(b) (ii)(c), and 29(1) of Narcotic Drug Psychotropic Substances Act, 1985, (hereinafter, for the sake of brevity, referred to as “NDPS Act”). The respondent Police received the information on 21.11.2020 at 07.00 a.m



CRL.A(MD).Nos.614, 616 and 629 of 2022

relating to the illegal transportation of 30 Kgs of Ganja near Sinthamani Road, Vaalaitoppu, Muniyasamy tea shop, situated behind the railway gate, Madurai. Hence, P.Ws.1 to 3 reached the occurrence place and the informer identified A1, A2 and A3. A1 to A3 were caught by P.Ws.1 to 3 and P.W.2 informed about the right to be searched before the Gazetted Officer in compliance with the section 50 of NDPS Act. Thereafter, P.Ws.1 and 2 made search and found that they were in illegal possession of 30 Kgs of Ganja in two bags. Hence, they recovered the said contraband after arresting the accused. From the recovered contraband, they took the sample in S1 to S4 and packed the remaining contraband in P.1 and P.2. After that, P.W.2 produced the arrested accused before the police station and registered the FIR and submitted the report under Section 57 of the NDPS Act to P.W.4. P.W.4, after receipt of the report, produced the accused and also the contraband and other material documents before the learned Judicial Magistrate on the same day itself. Thereafter, he conducted the investigation and he entrusted the investigation to the P.W.5 on account of his transfer. P.W.5 continued the investigation and arrested the remaining accused namely A4 to A8. Thereafter, he filed the final report after obtaining the chemical analysis report and produced the same before the Principal Special Court, For EC and NDPS Act Cases, Madurai.



The same was taken on file in C.C.No.279 of 2020.

WEB COPY

4.The learned trial Judge after appearance of the accused served the copies under Section 207 Cr.P.C. Then, he framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

5.To prove the case, the prosecution examined P.W.1 to P.W.5 and exhibited 20 documents as Ex.P.1 to Ex.P.20 and produced 6 material objects as M.O.1 to M.O.6. Thereafter, all the accused were questioned under Section 313 Cr.P.C proceedings by putting the incriminating evidence against them. The accused denied the same as false and thereafter, the case was posted for defence evidence. On the side of the accused, no one was examined but they exhibited three documents as Ex.D1 to Ex.D3. The Exs.D1 to D3 are the arrest intimation of A1 to A3.

6.After considering the material adduced by the prosecution, Ex.D1 to Ex.D3 and also hearing the argument of the appellants and other accused, the trial Court convicted the appellants for the offence under Sections 8(C) r/w 20(b)(ii)(c) of NDPS Act and sentenced them to undergo



CRL.A(MD).Nos.614, 616 and 629 of 2022

10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- each, in default to undergo six months Simple Imprisonment each and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- each, in default undergo six months Simple Imprisonment each for the offence under Sections 29(1) of NDPS Act. Aggrieved by the same, the present appeals have been filed.

7.The learned counsel appearing for the appellants submitted that in Ex.D1 to Ex.D3 arrest memo, the crime Number was found and hence, there is a doubt over the recovery. Before the recovery, the arrest was made in the occurrence place. In the arrest memo, it shows that P.Ws.1 to 3 have not recovered the contraband in the occurrence place and they prepared all the materials in the respondent Police Station. Hence, there is a serious doubt over the prosecution witnesses. Hence, he seeks acquittal.

7.1.The learned counsel further submitted that A4 to A8 were acquitted under Section 29 of the NDPS Act. In the charge, no date and time were mentioned. In view of the above circumstances, there is no evidence to prove the conspiracy between them.



WEB COPY

7.2.The learned counsel further submitted that there was no recovery from A3 and recovery was made only from A1 and A2. In the said circumstances, conviction against A3 for the offence under Sections 8(C) r/w 20(b)(ii)(c), and 29(1) is not sustainable.

7.3.The learned counsel for the appellants submitted that the mandatory provisions of Section 52A of NDPS Act, was not been complied with. To substantiate the contention, he relied on the judgment of the Honourable Supreme Court in **MANGILAL versus THE STATE OF MADHYA PRADESH** reported in **2023 Live Law SC 549** and **SIMARNJIT SINGH versus STATE OF PUNJAB** reported in **2023 Live Law SC 570**. On the basis of the said judgments, they stated that without compliance of Section 52(A) of NDPS Act, the conviction and sentence passed against the appellants is liable to be set aside. As per the judgment of the above Supreme Court Judgment, Section 52(a)(iii) of NDPS Act, is mandatory. The witnesses admitted that there was no compliance of 52(a)(iii) of NDPS Act. On the basis of the above judgment, because of the non compliance of 52(a)(iii) of NDPS Act, the accused are entitled for acquittal. The learned counsel appearing for the appellant submitted that



no independent witnesses have been examined. Even though the said place of the occurrence is near the railway track and in the FIR it is stated that two independent witnesses were asked but they refused to act as independent witnesses, in the said circumstances, there was no action against the said persons. The learned trial Judge failed to consider the above non examination of the independent witnesses.

7.4.The learned counsel further submitted that the learned trial Judge made the contra findings in Paragraph No.11(8)(d),(e),(f) and (g) and erroneously convicted the appellants. Therefore, he seeks for acquittal.

8.The learned Additional Public Prosecutor made the following submissions:

8.1.The learned Additional Public Prosecutor submitted that in this case contraband was recovered on 21.11.2020 at 08.30 a.m and produced before the learned Judicial Magistrate on 09.15 p.m on the same day. The sample also produced on the same day. Hence, the Form 91 with the particulars of the recovered contraband and samples were produced before the Court. The Remaining contraband was also produced before the Court



CRL.A(MD).Nos.614, 616 and 629 of 2022

and the same was marked as M.O.5 and M.O.6. The Section 52 A of NDPS Act, is applicable only in the case of the disposal of the contraband.

In this case, the entire contraband was produced before the learned trial Judge and was also marked. Hence, the submission of the appellant is not legally valid.

8.2.He further submitted that 52A of NDPS Act, is complied with and corresponding report is also marked and P.W.4 also has spoken about the receipt of the report as per section 57 of the NDPS Act. He further submitted that there was ground to convict the appellants under Section 29 of NDPS Act. In order prove the conspiracy, there is material produced by the prosecution. The illegal company with the contraband itself is a material circumstance to presume conspiracy. He further submitted that the seized contraband was produced before the Court below along with the accused on the day itself and the sealed samples were sent to chemical analysis and the same was found with the seal intact. In the said circumstances, the prosecution clearly proved the case beyond reasonable doubt.

8.3.He further submitted that Ex.D1 to Ex.D3 is not arrest memo and



CRL.A(MD).Nos.614, 616 and 629 of 2022

it is only arrest intimation of the appellants A1 to A3. The arrest memos are marked as Ex.P7 to P9. In the arrest memo, there is no mentioning of the crime number. The Arrest intimation is prepared at the station, after the registration of the case and intimidated the same to the accused regarding to the arrest. In the said circumstances, the argument of the appellants is not correct. The Ex.D1 to Ex.D3 are arrest intimation. So, it contains crime Number. In the said circumstances, in all aspects, the learned trial Judge considered the evidence available against the appellants and convicted them and minimum sentence was imposed under the said Act.

9.This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellants and reply made by the learned Additional Public Prosecutor and also considered the precedents relied upon by them.

10.Whether the conviction and sentence passed by the learned trial Judge passed by the appellant is required to be interfered with?

11.The submission of the learned counsel for the appellant is that the alleged place of occurrence is near the railway track. It is the prosecution



CRL.A(MD).Nos.614, 616 and 629 of 2022

case that the respondent police asked two independent witnesses to witness the seizure but they refused to witness the same. But, the respondent police has not taken any action against the said independent witnesses as per law. Therefore, the non-examination of the independent witnesses creates a doubt over the presence of the appellant in the scene of occurrence and the recovery of the contraband from the appellants. The said submission has no legs to stand. The Hon'ble Supreme Court repeatedly held that non-examination of the independent witness is not a ground to disbelieve the testimony of the police officers. Further, Hon'ble Supreme Court in **2011 3 SCC 521, 2020 2 SCC 563, 2020 10 SCC 740**, laid down the dictum that merely because the prosecution did not examine any independent witness that would not necessarily lead to a conclusion that the accused was falsely implicated and also the evidence of the official witness cannot be distrusted and disbelieved, merely on account of their official status. When the testimony of the police witness is trustworthy and cogent, the same can be relied to convict the accused.

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



CRL.A(MD).Nos.614, 616 and 629 of 2022

12.1. The primordial submission of the appellant that due to the non-compliance of Section 52A of the NDPS Act, the appellant ought to have been acquitted. 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.1.1. 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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.*

12.1.2.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 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*



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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 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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.]

12.1.3.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 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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

only deals with the disposal of seized narcotic drugs and psychotropic substances.”

12.1.4. 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-production of the entire contraband before the Court is not fatal when the seizure was proved



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

*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*



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

paras 7 to 9 of the decision. Similarly in Ashok [Ashok v. State of 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.



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.*



CRL.A(MD).Nos.614, 616 and 629 of 2022

WEB COPY

12.2. 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 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.

12.3. 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.

12.4.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. 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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 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’.”

12.4.1. 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

WEB COPY

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 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.



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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:

“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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.6. From the 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.”

12.6.1.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 the procedure for conducting seizures. Para 2.2 of Standing Order No. 1 of 1989 states that samples



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

to remove the confusion that prevails regarding the true position as regards drawing of samples.

12.6.2.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**

II. 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.6.3. 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



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.7.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 Paras 15 to 19 of this order.

12.8.Both the directions relate to the procedure to be followed after the seizure. The said direction was issued on finding that there was no



CRL.A(MD).Nos.614, 616 and 629 of 2022

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



CRL.A(MD).Nos.614, 616 and 629 of 2022

of the seized contraband by making the application under Section 52A of NDPS Act.

12.9.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.

12.10.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 ?

12.11.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
-----------------------------------	-----------------------------------



CRL.A(MD).Nos.614, 616 and 629 of 2022

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 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.11.1. 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 of the NDPS 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.12.In this case, the contraband was recovered on 21.11.2020 at 08.30a.m. As per the above notification, the samples S1 to S4 also were taken. Remaining contraband also were packed as P1 and P2 at the occurrence place itself and Athachi was prepared. All the samples and the entire contraband were produced before the Court on the same day itself. From 91 with the particulars of the recovered samples of contraband were also produced before the learned Judicial Magistrate, on the same day itself at the time of the remand of the accused. The learned Judicial Magistrate, after accepting the contraband and verification, directed it to be produced before the Principal Special Court for EC and NDPS Act Cases, Madurai. Thereafter, samples and the remaining contraband were produced before the Special Court for EC and NDPS Act, Madurai. The relevant form 91 are as follows:-



CRL.A(MD).Nos.614, 616 and 629 of 2022

WEB COPY

அ.நா.உ.20

ORIGINAL - 71 -

18520
LIST OF PROPERTY SENT TO MAGISTRATE

மாஜிஸ்திரேட்டுக்கு அனுப்பப்பட்ட மொத்தச் சூரியன்

F 553927

Form No. 21 Date of Est. 21/11/2020

Bilal Karamat 2020-21, Spring Semester C&G 2019-20

Received on 26/03/2020 Date of Receipt 26/03/2020

Order No. 558, 517, 415

[illegible][illegible][illegible]

21/11/2020

100% 100%

Notwithstanding the foregoing, the Board of Directors shall have the authority to amend or terminate the Plan at any time without the approval of the stockholders.

U.S. Pat. 2,158,825—34 220 1600.—2010

Three copies.
 to
 PRINCIPAL SPECIAL AGENT
 NOPS. ACT CASES.
 MADURAI



CRL.A(MD).Nos.614, 616 and 629 of 2022

WEB COPY

[illegible]



WEB COPY

12.13. The said contraband was produced during the course of the trial and marked as M.O.1 to M.O.6 and the same was identified by the witnesses. P.W.1, P.W.2 and P.W.3 have cogently deposed about the above recovery and the taking of the samples and packing of the remaining contraband and identified the same before the Court at the time of trial. The learned trial judge also, in the final portion of the judgment in Paragraph No.11.9.c has directed to take steps for the destruction of the contraband after the appeal period is over. Therefore, the argument of the appellant on the basis of the judgment of the Hon'ble Supreme Court reported in *2023 Live Law SC 549* and *2023 Live Law SC 570* is misconceived and the facts of the said case is entirely different from the present facts of the case. In the above cases, the specific stand of the prosecution is that the entire contraband was destructed and hence, the Court took a view along with the other circumstances that the prosecution has not proved the case beyond reasonable doubt.

12.14. 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



CRL.A(MD).Nos.614, 616 and 629 of 2022

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.

12.15.In view of the above discussion, this Court is not inclined to accept the submission of the counsel for the appellant that the non compliance of the 52A of the NDPS Act vitiated the conviction of the appellant under Section 8(c) read with Section 20(b)(ii)(c) of the NDPS Act, 1985.

13. The learned counsel appearing for the appellant submitted that the Section 57 of NDPS Act, is not complied with. The said submission is against the record. The P.W.4 clearly deposed about the receipt of the report under Section 57 of NDPS Act, on the same day itself and the same was marked as Ex.P.16.



WEB COPY

14. The learned counsel appearing for the appellants submitted that the conviction under Section 29(1) of NDPS Act, is not sustainable. It is well settled principle that even after acquittal of some of the accused, on the basis of the remaining evidence, the accused can be convicted. It is well settled principle that even though five accused were acquitted on the basis of the evidence of the prosecution witnesses, the conviction against the appellant is maintainable, since the prosecution witnesses clearly speak about the involvement of the appellant in the alleged offence. When the evidence adduced by the prosecution is intrinsically inseparable and the conviction is passed in favour of one accused and the acquittal is passed on the other accused, the principle of parity is applicable. When the evidence is separable, it would be open to the Court to convict the accused notwithstanding the fact that the evidence has been found to be deficient to prove the guilt of other accused. The Hon'ble Supreme Court in the case of ***Gangadhar Behera v. State of Orissa***, reported in **(2002) 8 SCC 381** is as follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his



conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

The said principle was reiterated by the Hon'ble Supreme Court in number of cases. The latest decision of the Hon'ble Three Member Bench of the Supreme Court reaffirmed the same in the following terms:

In Achhar Singh v. State of H.P., (2021) 5 SCC 543

26. The learned State counsel has rightly relied on Gangadhar Behera [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in Hari Chand v. State of Delhi [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] held that : (Hari Chand case [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] , SCC pp. 124-25, para 24)

“24. ... So far as this contention is concerned it must be



kept in view that while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon.”

In this case, remaining acquitted accused were not present in the scene of occurrence and they were arrayed on the basis of the confession of the appellants. There was no further material available to convict the said accused. Therefore, the learned trial Judge acquitted the remaining accused. But, the appellants were present and jointly carried the contraband. Therefore, the unusual company of the three persons with the contraband itself is a strong circumstances to prove the conspiracy between them.



CRL.A(MD).Nos.614, 616 and 629 of 2022

WEB COPY

15.The learned counsel appearing for the appellants submitted that D1 to D3 arrest memo is not accepted. As rightly pointed out by the learned Additional Public prosecutor that the same is arrest intimation, which has been prepared at the police station, after registration of the case. As per the **D.K.Basu guidelines** after the arrest, arrest intimation should be sent to the relative of the accused. For that purpose, the arrest intimation was preferred and the same was also produced before the learned trial judge on the same day itself along with accused. In the said circumstances, the presence of the crime number in the arrest intimation does not create any doubt over the case. The learned counsel further submitted that arrest memo is different from the arrest intimation. Arrest memo is prepared at the place of occurrence and the same were marked as Ex.P7 to Ex.P.9. Arrest intimation is prepared at the Station, after the registration of the case. In the said circumstances, the submission of the learned counsel for the appellants regarding the D1 to D3 arrest memo is not accepted.

16.Accordingly, the conviction and sentence passed by the learned Principal Special Court for NDPS Act cases, at Madurai, in C.C.No.279 of 2021, dated 18.08.2022, is hereby confirmed and the



CRL.A(MD).Nos.614, 616 and 629 of 2022

Criminal Appeals are dismissed.

WEB COPY

14.03.2024

NCC : Yes/No

Index : Yes / No

Internet : Yes / No

vsg

To

- 1.The learned Principal Special Judge for NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Keeraithurai 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.



WEB COPY



CRL.A(MD).Nos.614, 616 and 629 of 2022

K.K.RAMAKRISHNAN,J.

vsg

Pre-delivery Order made in
CRL.A(MD).Nos.614, 616
and 629 of 2022

14.03.2024