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*Crl.A.(MD).No.621 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 30.04.2024

CORAM

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

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Kannan

.. Appellant

Vs.

The State rep. by  
The Inspector of Police,  
Cumbum North Police Station,  
Theni.  
(Crime No.54 of 2015)

.. Respondent

**PRAYER:** Appeal filed under Section 374 (2) of the Criminal Procedure Code, to call for the records in C.C.No.113 of 2015 dated 19.09.2022, on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Jagadeesh Pandian

For Respondent : Mr.B.Nambi Selvan  
Additional Public Prosecutor



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## **JUDGMENT**

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The accused in C.C.No.113 of 2015 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, has filed this Criminal Appeal before this Court challenging the conviction and sentence imposed against him in the impugned judgment dated 19.09.2022. The conviction and sentence is as follows:

| <b><i>Conviction for the Offence under Section</i></b> | <b><i>Sentence of Imprisonment</i></b>                                          |
|--------------------------------------------------------|---------------------------------------------------------------------------------|
| 8(c) r/w 20(b)(ii)(B) of the NDPS Act                  | 5 years R.I and to pay a fine of Rs.50,000/- in default to undergo 6 months S.I |

2. P.W.2 attached with the respondent police received the secret information on 24.01.2015 at about 07.00 pm, about illegal transportation of Ganja by the appellant. Thereafter, he reduced the same in writing and made entry in Ex.P4 and the same was sent to his superior/ Inspector of Police under Ex.P5. Thereafter, after obtaining the permission he went to the place of the occurrence. The informer identified the appellant. P.W.2 and his team intercepted him and seized the contraband from the vehicle, namely, Kinetic V2 XL, bearing registration No.TN-60-Z-7648. Thereafter, P.W.2 after completing the formalities under the NDPS Act,



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seized the contraband and took a sample and also sealed the remaining contraband and after preparation of the confession and recovery mahazar produced him before the station. Thereafter, P.W.2 registered the case in Crime No.54 of 2015 and also handed over all the materials along with the accused. Thereafter, investigation was completed and the final report was filed and the same was taken on file in C.C.No.113 of 2015.

3. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellant, framed charges under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act 1985 and the same was read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood for trial.



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4.The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 11 documents as Ex.P.1 to Ex.P.11 and marked six material objects as M.O.1 to M.O.3.

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

6.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.113 of 2015 was guilty and passed the following conviction and sentence as against the appellant:

| <b><i>Conviction for the Offence under Section</i></b> | <b><i>Sentence of Imprisonment</i></b>                                          |
|--------------------------------------------------------|---------------------------------------------------------------------------------|
| 8(c) r/w 20(b)(ii)(B) of the NDPS Act                  | 5 years R.I and to pay a fine of Rs.50,000/- in default to undergo 6 months S.I |



**7. Submissions of the learned counsel for the appellant:**

7.1. There was no compliance of Section 42 of the NDPS Act.

7.2. Apart from that, there was failure to follow Section 42(1) of the NDPS Act.

7.3. In Ex.P5 there is no mentioning about the time and vehicle and place of occurrence and there was no corresponding entry under Section 42 of the NDPS Act.

7.4. The prosecution has not proved its case about recovery of the contraband beyond reasonable doubt and also the contraband was produced before the trial Court after number of days, Which, creates doubt over the recovery of the contraband.

7.5. The appellant has four previous antecedents. After registration of this case, there was no involvement in any other offences by the appellant. In such circumstances, he seeks for reduction of the sentence.

**8. Submissions of the learned Additional Public Prosecutor:**

The learned Additional Public prosecutor, on the other hand, submitted that P.W.2 upon receipt of the information reduced the same in



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writing under Ex.P5 and after obtaining the permission from the higher officials, he went to the occurrence place and seized the contraband and hence there is no violation of the section 42 of the NDPS Act. Further the learned Additional Public Prosecutor submitted that there are four previous cases and hence, he seeks for dismissal of the appeal.

9. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

#### **10.Recovery of Ganja**

P.W.1 and P.W.2 cogently deposed about the recovery of the contraband weighing 12 Kilograms of Ganja from the appellant. They deposed about the recovery without any contradiction. This Court perused the entire evidence and finds that their evidence is trustworthy and no circumstances were elicited to disbelieve their version. Hence, the prosecution proved the recovery of 12 Kg of Ganja beyond reasonable doubt.



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11. In the said circumstances, the prosecution case that on 24.01.2015, the contraband was recovered from the appellant is clearly proved beyond reasonable doubt. The submission of the learned counsel for the appellant that the delay in producing the contraband before the trial Court is immaterial when the entire contraband was produced before the learned Judicial Magistrate, at the time of remand itself. Apart from that the expert report also filed. In the expert report it is stated that the sample also was Ganja. The seals on the sample and the remaining contraband were intact and all were produced before the learned judicial magistrate at the time of the remand.

**12. *Compliance of Section 42-(2) of the NDPS Act:***

P.W.2 has deposed that he has received the secret information on 24.01.2015, relating to the illegal transportation of the ganja by the appellant. The same was reduced in writing under Ex.P5. The higher official also received the said information and made the endorsement that he received and also they gave the permission to conduct search. In the



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said circumstances, there is compliance of the section 42-(1) of the NDPS

Act.

### **13. Discussion on Quantity of contraband:**

Apart from that, this court perused the entire documents. The seized quantity of the Ganja is 12 Kgs and the same was produced before the Court below and the same was identified by P.W.1 and P.W.2. The chemical analysis report also confirmed the same as Ganja. In all aspects, the prosecution clearly proved the charge against the appellant. In all aspects, this court finds no merit in the contention of the appellant and hence, the appeal deserves to be dismissed.

14.Considering the facts and circumstances of the case and the incarceration of the appellant, this Court is inclined to modify the sentence imposed on the appellant/accused by the learned trial judge. The sentence imposed on the appellant is reduced from five years rigorous imprisonment to one year rigorous imprisonment.



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**15.** Accordingly, this Criminal Appeal is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence under Sections 8(c) r/w 209b(ii)(B) of the NDPS Act in C.C.No.113 of 2015, by the learned II Additional Special Court for NDPS Act Cases, Madurai, vide judgment dated 19.09.2022 is hereby confirmed.

(ii) the sentence of imprisonment to undergo five years rigorous imprisonment and a fine of Rs.50,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act

**is modified into**

*“to undergo **one year** rigorous imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and to pay a fine of **Rs.25,000/-** in default, to undergo 6 months simple imprisonment”.*

**30.04.2024**

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



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**To**

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- 1.The II Additional Special Court,  
Special Court for EC and NDPS Act Cases,  
Madurai.
- 2.The Inspector of Police,  
Cumbum North Police Station,  
Theni.
- 3.The Superintendent of Prison,  
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court, Madurai.



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**K.K.RAMAKRISHNAN, J.**

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