



Crl.A.Nos.127 and 298 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 30.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.127 and 298 of 2023

P.Ayyampillai

... Appellant in Crl.A.No.127 of 2023

Pachiyappan

... Appellant in Crl.A.No.298 of 2023

Vs.

State represented by

Inspector of Police

NIB CID Police Station,

Kanchipuram

Cr.No.6 of 2019

... Respondents in both Crl.Appeals

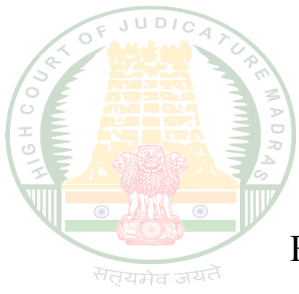
Common Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the judgment dated 05.07.2022 in C.C.No.137 of 2019 of the learned Special District Judge for NDPS Act Cases at Chennai and acquit the appellants herein of all the charges.

For Appellant in

Crl.A.No.127/2023

: Mr.M.Dinesh

for Mr.NA.Manimaran



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For Appellant in

Crl.A.No.298/2023

: Mr.S.Venkata Subramaniyan
for Mr.S.Kathiravan

For Respondent in

both Crl. Appeals

: Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

These Criminal Appeals have been filed by the appellants/accused to set aside the judgment of conviction and sentence passed by the Principal Special Curt under EC & NDPS Act, Chennai, in C.C.No.137 of 2019 dated 05.07.2022 and acquit the appellants herein of all the charges.

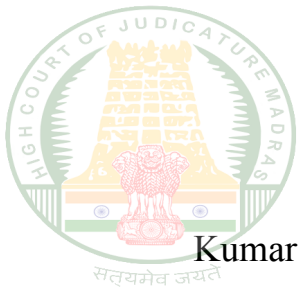
2. The case of the appellants is that the respondent/Police registered a case against Pachiyappan and one Kumar in Crime No.6 of 2019 for the offences under Sections 8(c) read with 20(b)(ii)(c), 25 and 29(1) (a) of the NDPS Act, alleging that on 15.02.2019, based on the secret information, the



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Inspector of Police (P.W.1), along with the Police party, intercepted a vehicle

bearing Reg. No.TN03-L-1146 that came towards Chennai from Nellore at Elavur Tollgate and on seeing the Police, one person opened the left side car door and escaped from the spot, however, they secured A1/Pachiyappan and later, they came to know that the person who had escaped from the spot was Kumar/A2. Since the public refused to stand as witness, P.W.1, in the presence of official witnesses, recovered six gunny bags of Ganja, each containing 25 kgs. and in total, 150 kgs. of Ganja was recovered. After completion of investigation, the respondent-Police filed charge sheet against A1/Pachiyappan under Sections 8(c) read with 20(b)(ii)(C), 25 and 29 of the NDPS Act, and the same was taken on file in C.C.No..137 of 2019 on the file of the Principal Special Court under EC & NDPS Act, Chennai. Since the said Kumar was absconding, the case against A2/Kumar was split up in C.C.No.114 of 2020. Subsequently, the respondent/Police filed additional charge sheet against one Ayyampillai, arraying him as A3, alleging that the said Pachiyappan and



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Kumar procured the Ganja to give the same to the said Ayyampillai. At this

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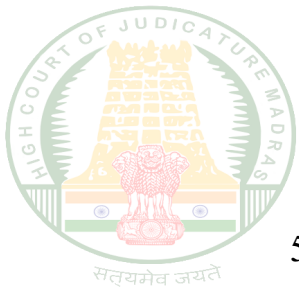
stage, it is to be noted that, the case against Kumar was slt-up in C.C.No.114

of 2020, the said Ayyampillai was arrayed as A2.

3. The trial Court, after completion of trial, found A1 and A2 guilty for the offences under Section 8(c) read with 20(b)(ii) (C) and 29 of the NDPS Act and convicted and sentenced them as follows:

Rank of the Accused.	Proved charges	Imprisonment (R.I.)	fine	In default
A1	U/s.8(c) r/w 20(b)(ii)(C) of the Act	12 years	Rs.1,50,000/-	6 months
A1	U/s.29 of the Act	7 Years	Rs.50,000/-	6 months
A2	U/s.8(c) r/w 20(b)(ii)(C) of the Act	12 years	Rs.1,50,000/-	6 months
A2	U/s.29 of the Act	7 Years	Rs.50,000/-	6 months

4. At the same time, A2 was not found guilty for the offence under Section 25 of the NDPS Act.



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5. Aggrieved by the judgment of conviction and sentence,

A1/Pachiyappan has filed the appeal in Crl.A.No.298 of 2023 and A2/P.Ayyampillai has filed the appeal in Crl.A.No.127 of 2023, before this Court.

6. The learned counsel for the 1st accused/appellant in Crl.A.No.298 of 2023 submitted that the mandatory provisions of Section 52 of the NDPS Act had not been complied with and all the witnesses in this case are Police/official witness and that the statements recorded by the Police/officials are not admissible in evidence. Further, the prosecution has not proved the case as against the appellant/A1 and that there is also violation of the statutory provisions. The trial Court, unfortunately, without considering the statutory validity of the documents, convicted the appellant/ A1. Therefore, the judgment of the trial Court is liable to be set aside and the appellant/A1 may be acquitted.

7. The learned counsel for the 2nd accused/appellant in Crl.A.No.127 of



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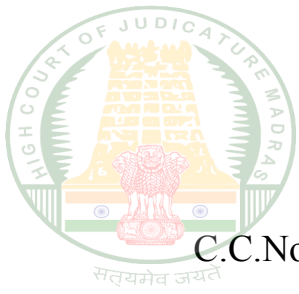
2023 submitted that the appellant/2nd accused was falsely implicated in this

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case only based on the confession statement made by the co-accused/A1. It is settled proposition of law that without any corroborative materials by any independent evidence, no accused can be convicted solely on the confession of the co-accused. Further, all the witnesses in this case, namely P.W.1 to P.W.4 are Police officials and no independent witness was produced/examined by the prosecution. Further, the prosecution has not marked the confession statement regarding recovery portion of the confession statement. In the absence of the same, conviction recorded against the appellant/2nd accused is perverse. Therefore, the judgment of the trial Court is liable to be set aside and the appellant/A2 may be acquitted.

8. Heard both sides and perused the materials available on record.

9. It is seen from the records that, originally, the case was registered against A1 and Kumar/A2 and after completion of investigation, charge sheet was filed against A1 and the case was taken on file by the trial Court in



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C.C.No.137 of 2019 in respect of A1. The case against Kumar was split up in

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C.C.No.114 of 2020. Subsequently, based on the confession of A1, one P.Ayyampillai was implicated in this case as A3 by the respondent-Police by way of filing additional charge sheet. However, since the said Kumar/A2 was absconding, the case was split up as against the said Kumar/A2 and Ayyampillai was arrayed as A2 at this stage.

10. Before the trial Court, in order to substantiate the case of the prosecution, 4 witnesses were examined as P.W.1 to P.W.4 and the documents were marked as Ex.P.1 to Ex.P-9 and M.O.Nos.1 to 21 were produced. On the side of defence, Ex.D-1 was marked.

11. It is further seen from the records that all the witnesses in this case are Police officials and there is no independent witness. The trial Court convicted A1 based on the recovery of contra-band and A2 was convicted based on the report made under Section 57 of the NDPS Act. Further, Ex.P.5/report under Section 57 of the NDPS Act, which shows that the



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materials were recovered based on the confession statement made by A1.

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Further, A2 was arrested based on the confession made by A1. Surprisingly, the confession portion of the statement leading to recovery, had not been marked by the prosecution. Further, the admitted portion of the recovery of the confession portion, has not been placed before the trial Court. Unfortunately, the trial Court also has not taken any care about the said fact, while examining P.W.1 and P.W.2.

12. The confession statement leading to recovery ought to have been marked by the prosecution. But the same was not marked and without the document, the trial Court has deliberated about the confession statement and convicted the accused/appellants which is perverse. However, the Court cannot acquit an accused simply based on the ground of technicality and procedural irregularity alone.

13. Therefore, considering the serious nature of offence and in the interest of justice, the judgement dated 05.07.2022 passed by the Special Court



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in C.C.No.137 of 2019 is set aside and the matter is remitted back to the
Special Court.

14. The trial Court is directed to conduct trial afresh and decide the
matter on merits and in accordance with law.

15. With the above observations, these Criminal Appeals are disposed of
and remanded as stated above.

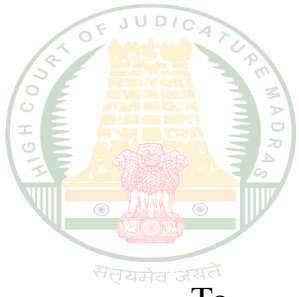
30.04.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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1. The Principal Special Court under EC & NDPS Act,
Chennai
2. The Inspector of Police
NIB CID Police Station
Kanchipuram
3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN. J.

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