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CRLA No. 117 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-06-2025

CORAM :

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRLA No. 117 of 2023

1. Srinu Babu

S/o Sathiyababu, Nurmathi Village,
Visakhapatnam, Andhra Pradesh

2. Venkata Rao

S/o Sathya Narayanan, Gannelba
Village, gorapalli Panchayat,
Luvvasingi Post, G Mad Ugula
Mandalam, VisakhaPatnam, Andhra
Pradesh

3. Raju Babu

S/o Sathya Narayanan, Gannelba
Village, Gorapalli Panchayat,
Luvvasingi Post, G Mad Ugula
Mandalam, Viskhapatnam, Andhra
Pradesh

Appellant(s)

Vs

1. Inspector Of Police

NIB-CID, Kancheepuram



Respondent(s)

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Order of Judgement passed by the Learned Principal Special Court under EC and NDPS Act Chennai in CC.176/2021.

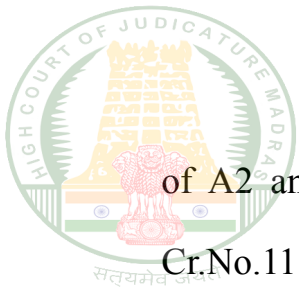
For Appellant(s): M/s R.C.Paul Kanagaraj

For Respondent(s): Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

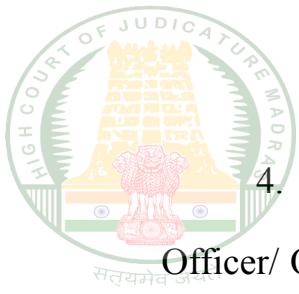
This Criminal Appeal has been preferred as against the judgment passed in CC.176/2021 by the learned Principal Special Judge, EC and NDPS Court, Chennai thereby convicting the appellants for the offences punishable under Section 235(2) Cr.P.C., Section 8(c) r/w. 20(b)(ii)(C) of the NDPS Act and Section 8(c) r/w. 29(1) of the NDPS Act.

2. The case of the prosecution is that on 14.03.2021 the respondent police received an information from the informant that between 8.00 am and 9.00 am three persons were about to sell Ganja near Kamarajar statue at Thiruvallur. After receiving the information, the respondent police along with a team have mounted surveillance at the scene of occurrence. They have intercepted three persons who carried shoulder bags and after complying the mandatory formalities as contemplated under NDPS Act, the respondent police seized 21 kgs of Ganga from the possession of A1 and 21 kg of Ganja from the possession



of A2 and A3 jointly and a FIR has been registered against the accused in Cr.No.11 of 2021 and they were arrested and remanded to judicial custody. The contraband was also seized from the accused and produced before the concerned Court. After completion of investigation the respondent filed a final report and the same has been taken cognizance by the trial Court in C.C.No.176/2021.

3. On the side of the prosecution P.W.1 to P.W.5 were examined and Exs.P1 to P22 were marked. The prosecution also produced the material objects M.O.1 to M.O.11. On the side of the accused D.W.1 and D.W.2 were examined and Exs.D1 to D3 were marked. On a perusal of the oral and documentary evidence the trial Court found the accused guilty for the offence punishable under Section 8(c) r/w. 20(b)(ii)(C) of the NDPS Act and Section 8(c) r/w.29(1) of NDPS Act and they were sentenced for 12 years each and to pay a fine of Rs.1,00,000/- each for the offences punishable under Section 8(c) r/w. 20(b)(ii)(C) of the NDPS Act, in default to undergo a further period of six months Rigorous Imprisonment. They were also convicted and sentenced to undergo seven years Rigorous Imprisonment for 7 years each and to pay a fine of Rs.50,000/- each for the offences punishable under 8(c) r/w.29(1) of NDPS Act and in default to undergo a further period of six months Rigorous Imprisonment. Aggrieved by the same, the present Criminal Appeal has been preferred.



4. The prosecution have examined as P.W.1 to P.W.5. P.W.1 – Duty Officer/ Occurrence witness, had received information at about 06.15 p.m. as if the appellants are about to sell Ganja. Hence P.W.1 along with his team reached the scene of occurrence at about 08.00 a.m and at about 08.30 a.m. they made a search on the appellants after complying other mandatory provisions contemplated under the NDPS Act. At about 08.45 a.m., 09.00 a.m. and 09.15 a.m., the first appellant was found in possession of 21 kgs of Ganja and second and third appellants were found in possession of 21 kgs of Ganja, respectively. After taking sample from the contraband, the same has been seized at about 10.00 a.m. The remaining contraband was packed and all the appellants were served with arrest memo at about 10.30 a.m., 11.00 a.m. and 11.30 a.m. respectively and they were arrested at about 10.40 a.m., 11.15 a.m. and 11.45 a.m. respectively. The arrest memos were marked as Exs.P7, P8 and P9 respectively.

5. On perusing Exs.P7 to P9, it contains Crime No.11/2021. Though it was prepared by the Investigation Officer namely P.W.5, it was served to the accused at the scene of crime. As per P.W.1's evidence, only after serving arrest memo to the appellants, they were arrested and thereafter their confession statements were recorded at about 12.00 p.m. to 12.15 p.m from the first accused and 12.15 p.m. to 12.30 p.m. from the second accused. Thereafter the appellants and the contraband were brought to the police station and thereafter the report was prepared.



6. The report along with the contraband and appellants were sent to the Investigation Officer at about 12.30 p.m. Thereafter only the FIR got registered in Cr.No.11/2021. As stated supra, the arrest memos Exs.P7 to P9 which was served to the accused at 10.30 a.m., 11.00 a.m. and 11.30 a.m., contains the Crime No.11 of 2021. If at all it was prepared by the Investigation officer, P.W.5, it would not have contained the Crime No.11 of 2021. Therefore, the very registration of FIR, arrest memo and seizure of Mahazar are doubtful.

7. In this regard the learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Kaaljit Singh @ Pappu Vs. State of Punjab*** reported in ***(2020) 14 SCC 9*** wherein it is held as under:

“ 6. This Court, in the recent decision in the case of *Mohan Lal Vs. The State of Punjab* – AIR 2018 SC 3853, has frowned upon the same police official being the informant and the investigating officer. The court has observed thus:

“25. In view of the conflicting opinions expressed by different two Judges Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under *Article 21* of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined



conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

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7. Indeed, Manjit Singh (PW 2) had received information telephonically and had passed on the same to his contemporary who recorded the FIR but the fact remains that he himself investigated the case. The unfairness in investigation becomes more glaring when we peruse the search and seizure panchanamas. It is seen that the FIR number has been noted at the top of these panchanamas. It is unfathomable as to how the FIR number could be noted on the search and seizure panchanamas when the same were drawn up obviously at an earlier point in time and preceded the registration of the FIR. Even this discrepancy has not been explained by the prosecution at all. Furthermore, we find that the FIR has been registered by Nirmaljit Singh but he has not been examined by the prosecution and no explanation is offered in this regard as well.

8. All these deficiencies, in our opinion, create serious doubts and are fatal to the prosecution case, for which reason the appellant deserves to be acquitted of the stated offence by giving him the benefit of doubt. We order accordingly. The bail bond stands discharged. The appeal is allowed.”

8. The above case is squarely applicable to the case on hand. It is seen from the Exs.P7 to P9 that Crime No.11/2021 is contained in all those documents. It clearly shows that the arrest memos were already prepared and served on the appellants at the place of scene of crime. The prosecution failed to explain the discrepancy, and it is apparent on the face of the record in the prosecution's case. Therefore the prosecution failed to prove the case beyond the doubt and the benefit of doubt goes in favour of the appellants. Hence, this Court feels that the above conviction and sentence imposed on the appellants cannot be sustained and the same is liable to be quashed.



9. In the result, the Criminal Appeal is allowed and the judgment of conviction and sentence imposed on the appellants dated 20.12.2022 in CC.176/2021 on the file of the Principal Special Judge, EC and NDPS Court, Chennai, is hereby set aside and the appellants are acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellants forthwith. Bail bonds, if any executed, shall stand cancelled.

20-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. Inspector Of Police
NIB-CID, Kancheepuram.

2. The Principal Special Judge, EC and
NDPS Court,
Chennai

3. The Public Prosecutor,
Madras High Court.



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G.K.ILANTHIRAIYAN J.

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