



Crl.A.No.135 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1. Mukundhan

2. Manu @ Mannaar

... Appellants

Vs

State represented by,
The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.
(Crime No.1542 of 2020)

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the order passed in CC.107 of 2020 dated 28.12.2022 on the file of the Special Court under EC Act / NDPS Act Coimbatore district.

For Appellants : Mr.C.Prakasam

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in CC.107 of 2020 dated 28.12.2022 on the file of the Special Court under EC Act / NDPS Act Coimbatore district, thereby convicting the appellants for the



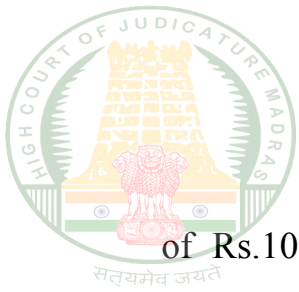
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offence punishable under Sections 8(c) read with Section 20(b)(ii)(b) and Section 29 (1) of NDPS Act.

2. The case of the prosecution is that on 26.06.2020, on receipt of secret information, the respondent went to the scene of crime and conducted a search. At that time, the accused were found in possession of ganja weighing 1.5 Kgs and the same was seized from the first accused and money to the sum Rs.720/- was also seized from the second accused. Hence, the complaint.

3. After registration of FIR in Crime No.1542 of 2020 for the offences punishable under Sections 8(c) read with Section 20(b)(ii)(b) and Section 29 (1) of NDPS Act. They were arrested and remanded to judicial custody. After completion of investigation, filed final report and the same has been taken cognizance by the Trial Court in C.C.No.107 of 2020.

4. The prosecution had examined PWs.1 to 3 and marked Exs.P1 to P3 and produced M.Os.1 to 2. On perusal of oral and documentary evidences, the Trial Court found both the appellants guilty for the above said offences and sentenced them to undergo three years rigorous imprisonment and imposed fine



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of Rs.10,000/-, in default to undergo further period of two years rigorous imprisonment.

5. The learned counsel for the appellants would submit that though the scene of crime was at public place surrounded by a large number of general public, the respondent failed to examine any independent witness to support the case of the prosecution. That apart, the respondent failed to follow the mandatory procedures as contemplated under Section 42 and 50 of the NDPS Act. No independent witness was examined in order to bring the charges to home. Even in the mahazer, no independent witness had attested the same to lend credibility to the prosecution case.

6. The learned Additional Public Prosecutor submitted that the prosecution had categorically proved the case and the Trial Court had rightly convicted the appellants for the offences under Sections 8(c) read with Section 20(b)(ii)(b) and Section 29 (1) of NDPS Act. Both the appellants were in conscious possession of contraband weighing 1.5 kgs and the money was also seized from the second accused. The appellants had voluntarily came forward to accept for search to be made by the respondent. Therefore, there is no



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violation of Section 50 of NDPS Act. Insofar as other procedures are concerned, it was duly followed by the respondent before subjecting the appellants for trial.

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

8. There are totally two accused, in which the appellants are arrayed as A1 and A2. According to the case of the prosecution, on secret information, the respondent and its team went to the scene of crime and found that the appellants were in possession of contraband weighing 1.5 Kgs of Ganja and Rs.720/- cash. Both were seized through Exs.P3 and P4, seizure mahazers. Thereafter, they had collected a sample which was produced as M.O.1. The remaining contraband was packed and produced as M.O.2.

9. A perusal of records revealed that admittedly, the scene of crime was near Muneeshwaran Temple, Gandhi Nagar, Koundampalayam, Coimbatore. It is a public place frequented by a large number of public, who used to visit the temple regularly. However, the respondent failed to obtain the signature of any member of the public to substantiate the charges levelled as



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against the appellants.

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10. The prosecution had examined PW.1, who was working as Superintendent of Police and had received a secret information. According to PW.1, on receipt of the secret information, he obtained the necessary permission from the Inspector of Police and went to the scene of crime. At the said place, the appellants were found standing in a suspicious manner. Therefore, they were apprehended and searched. On search, the appellants were found in possession of ganja weighing 1.5 kgs and same was seized from the first accused and a sum of Rs.720/- was seized from the second accused. Both appellants are brothers. The contraband and cash were seized under the seizure mahazars which were marked as Exs.P3 and P4.

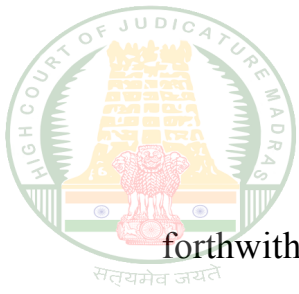
11. A perusal of Exs.P3 and P4 revealed that LWs.2 and 3 were signed as witnesses. However, the prosecution had examined LW.3 as PW.2 in order to prove the seizure and marked the seizure mahazer. Therefore, admittedly the respondent failed to examine any general public to prove the case. PW.1 had received the secret information and also obtained permission from the higher officials.



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12. A perusal of all the materials revealed that the respondent mechanically foisted a case as against the appellants and proceeded with the trial. In fact, PW.1 categorically admitted that the scene of crime was a public place frequented by a large number of people and that several residential houses were also located in the vicinity. All the documents were prepared on a single day and registered the case as against the appellants. The respondent, mechanically had taken a stand that though the occurrence had taken place in a public place, no one came forward to stand as witness. Even then, the respondent failed to examine any general public and failed to subject them as witness to the seizure of the contraband from the appellants.

13. In view of the above, the prosecution failed to prove the charges beyond any reasonable doubt. Therefore, the benefit of doubt goes in favour of the accused. Therefore, the impugned order cannot be sustained and is liable to be set aside. Accordingly, the order passed in CC.107 of 2020 dated 28.12.2022 on the file of the Special Court under EC Act / NDPS Act Coimbatore district, is hereby set aside. The appellants are acquitted from all charges in CC.107 of 2020 dated 28.12.2022 on the file of the Special Court under EC Act / NDPS Act Coimbatore district. The appellants are directed to be set at liberty



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forthwith unless his custody is otherwise required in connection with any other

case. The fine amount, if any, paid by the appellants shall be refunded. Bail

bond, if any, executed by the appellants shall stand cancelled.

14. Accordingly, this Criminal Appeal stands allowed.

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Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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G.K.ILANTHIRAIYAN, J.

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To

1. The Special Court under EC Act / NDPS Act,
Coimbatore district.
2. The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

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