



Crl.A.No.284 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM:

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

Crl.A.No.284 of 2023

1. Kottaisamy
2. Udayakumar

... Appellants

Vs.

The State rep. by
The Inspector of Police,
NIBCID, Chennai.
Cr.No.80 of 2019

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellants 1 & 2 on 30.01.2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai, in C.C.No.189 of 2019 and acquit them from all the charges.

For Appellants

For A1 : Mr.R.S.Vaideeswaran
Legal aid counsel
For A2 : Mr.S.Karthikeyan
For Mr.K.Thenrajan

For Respondent

: Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed as against the judgment dated 30.01.2023, passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, made in C.C.No.189 of 2019, thereby convicting the appellants for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C), 29(1) & 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”).

2. The case of the prosecution is that on 21.07.2019 at about 7.00 a.m., P.W.1 had received an information from the informant, while he was in Station on duty that, two persons were involved in illicit trafficking of ganja. Immediately, he informed to the Inspector of Police and obtained permission to visit the scene of crime. Accordingly, the petitioner and his team members went to the scene of crime and found that the accused persons were in an auto with possession of 40 kgs of ganja. They conducted a search and after completion of all formalities, the respondent brought the accused to the police station and registered the FIR in Crime No.80 of 2019 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 29(1) & 25 of the NDPS Act. After completion of



investigation, they filed final report and the same has been taken cognizance by the trial Court in C.C.No.189 of 2019.

3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.5 and marked documents in Ex.P.1 to Ex.P.15. The prosecution also produced material objects in M.O.1 to M.O.4. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidences, the trial Court found the first appellant guilty for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C) & 29(1) of the NDPS Act and sentenced him as follows:-

S.No.	Conviction	Sentence
1	8(c) r/w. 20(b)(ii)(C) of the NDPS Act	to undergo rigorous imprisonment for a period of twelve years and to pay fine of Rs.1,20,000/-, in default to undergo rigorous imprisonment for further period of six months.
2	8(c) r/w. 29(1) of the NDPS Act	to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.50,000/-, in default to undergo rigorous imprisonment for further period of six months.

The trial Court also found the second appellant guilty for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C), 29(1) & 25 of the NDPS Act and sentenced him as follows:-



S.No.	Conviction	Sentence
1	8(c) r/w. 20(b) (ii)(C) of the NDPS Act	to undergo rigorous imprisonment for a period of twelve years and to pay fine of Rs.1,20,000/-, in default to undergo rigorous imprisonment for further period of six months.
2	8(c) r/w. 29(1) of the NDPS Act	to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.50,000/-, in default to undergo rigorous imprisonment for further period of six months.
3	25 of the NDPS Act	to undergo rigorous imprisonment for a period of twelve years and to pay fine of Rs.1,20,000/-, in default to undergo rigorous imprisonment for further period of six months.

The above sentences are ordered to run concurrently. Aggrieved by the same, both the appellants filed the present appeal.

4. The learned counsel appearing for both the appellants would submit that the Sub Inspector of Police who received the secret information was examined as P.W.1. He categorically deposed that he along with two other constables went to the scene of crime and requested two individuals to stand as witnesses. However, they refused to do so and therefore other two constables stood as witnesses. Therefore, the non-examination of the individuals is fatal to the entire case of the prosecution. Further P.W.1 informed about the search to be conducted before the gazetted officer as contemplated under Section 50 of the NDPS Act. Both the accused consented that the search to be conducted by the



respondents. However, the consent letter was received jointly from both the accused. It is clear violation of the mandatory provisions under Section 50 of the NDPS Act. Further after search they found contraband weighing about 40 kgs and they had taken samples of 50 grams in S.1 to S.4. However, the S1 & S4 were not sent for analysis. Further after receipt of the report from the analysis both the samples were not produced before the Court and not marked. Therefore, it is fatal to the case of the prosecution. In support of his contention he relied upon the following judgments:-

- (i) 2019 AIR (SC) 3569 – Vijay Pandey Vs. State of Uttar Pradesh***
- (ii) 2014 AIR (SC) 1384 – State of Rajasthan Vs. Parmanand & Anr.***

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that simple contradictions and discrepancies would not be fatal to the case of the prosecution. On receipt of the secret information, P.W.1 went to the scene of crime along with other two constables. During that time, the appellants had come in an auto and they were in possession 20 Kg of Ganja each, totally 40 Kg of Ganja in the auto. Immediately, after completion of all formalities, the



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contraband were seized and they were brought to the police station. It was categorically deposed by P.W.1 and the prosecution clearly proved the charges. Therefore the trial Court rightly convicted the appellants and it doesn't warrant any interference of this Court.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The learned counsel appearing for the appellants raised two grounds. The first one is that there is a violation of Section 50 of the NDPS Act. The second one is that the prosecution failed to mark the samples which were not sent for analysis as S1 & S4 before the trial Court. On perusal of the records, it is revealed that though the respondent police had informed the appellants that the search was to be conducted before the gazetted officer, both have jointly consented for the search to be conducted by the respondent. The said consent letter was marked as Ex.P.2. On perusal of the Ex.P.2, it is revealed that it was signed by both the accused. It was not given by each of the accused and it is in violation of Section 50(1) of the NDPS Act. In support of the said contention, the learned counsel appearing for the appellants relied upon the judgment



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reported in **2014 AIR (SC) 1384** in the case of **State of Rajasthan Vs.**

Parmanand & Anr. in which, the Hon'ble Supreme Court of India held

as follows:-

“14. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears



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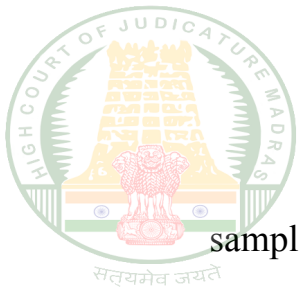


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repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.”

Thus it is clear that the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50 of the NDPS Act. The consent cannot be obtained jointly since the offences under the NDPS Act carry stringent punishment and therefore, the prescribed procedure has to be meticulously followed. In this case, the prosecution has failed to follow the procedure as contemplated under Section 50(1) of the NDPS Act. Therefore it is fatal to the case of the prosecution.

8. Insofar as the non-production of samples which were not sent for chemical analysis viz., S1 & S4 is concerned, admittedly, four



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samples were marked as S1, S2, S3 & S4 respectively. On perusal of the chief examination of P.W.1, it is revealed that to produce the S1 & S3, the prosecution sought for time. However, it was not produced before the trial Court. In this regard, the learned counsel appearing for the appellants relied upon the judgment reported in **2019 AIR (SC) 3569** in the case of **Vijay Pandey Vs. State of Uttar Pradesh**, in which the Hon'ble Supreme Court of India held as follows:-

“8. The failure of the prosecution in the present case to relate the seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances the mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have to be correlated. The observations in Vijay Jain vs. State of Madhya Pradesh, (2013) 14 SCC 527, as follows are considered relevant :

“10. On the other hand, on a reading of this Court's judgment in Jitendra's case, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is



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to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in the case of Ashok (supra), this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its nonproduction and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant.”

Thus it is clear that non production of seized samples before the trial Court and mere production of a laboratory report that proves the sample to be narcotics, cannot be a conclusive proof in itself. In the case on hand, admittedly the samples which were seized and sent for chemical analysis were not produced before the Court below. Over all the prosecution failed to prove the charges beyond reasonable doubt and as such benefits of doubt goes in favour of the appellant.



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9. Further it also seen that all the records of the documents are typed ones. There is absolutely no possibility to carry all the instruments to the place of occurrence and prepare typed documents. Therefore, the entire case of the prosecution is not legitimate.

10. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court in respect of all the charges against the appellants cannot be sustained and are liable to be set aside.

11. In view of the above discussions, the conviction and sentence imposed on the appellants by the judgment dated 30.01.2023, by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, in C.C.No.189 of 2019, for the offence under Sections 8(c) r/w. 20(b)(ii)(C), 8(c) r/w. 29(1) & 25 of the NDPS Act, are



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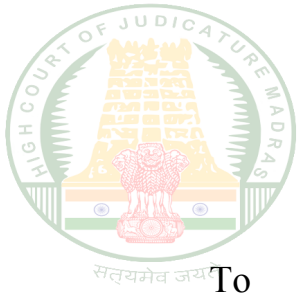
hereby set aside. Both the appellants are acquitted of all charges in C.C.No.189 of 2019, on the file of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai. Fine amount, if any paid, shall be refunded to the appellants forthwith. Bail bonds, if any executed, shall stand cancelled.

12. Accordingly, the Criminal Appeal stands allowed.

10.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
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1. The Principal Special Judge,
Special Court for EC & NDPS Act,
Chennai,
2. The Inspector of Police,
NIBCID,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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