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Crl.A.No.443 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2025

PRONOUNCED ON : 24.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl.A.No.443 of 2022

1.Yasin,
S/o.Shek Alavudin

2.Mohamed Hussen,
S/o.Abdhul Munaf,
(Both are residing at
No.1/1, Srinivasapuram 2nd Street,
Old Washermenpet,
Chennai - 600 021.)

...

Appellants / A1 & A2

versus

State by
The Inspector of Police,
H1 Washermenpet Police Station,
Chennai.
(Crime No.1143 of 2019)

...

Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 06.04.2022 in C.C.No.141 of 2020 on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.



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For Appellants : Mr.B.Kumarasamy

For Respondent : Mr.J.Subbiah
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been preferred against the judgment dated 06.04.2022 in C.C.No.141 of 2020, on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

2. The trial court convicted the appellants/A1 & A2 and sentenced as follows:-

<i>Rank of the Accused</i>	<i>Convicted under provisions</i>	<i>Sentence of Imprisonment</i>	<i>Fine Amount</i>
<i>A-1</i>	<i>8(c) r/w 20(b)(ii) (B) of the NDPS Act</i>	<i>1 Year RI</i>	<i>Rs.15,000/- each, in default to undergo 3 months simple imprisonment</i>
<i>A-2</i>			

3. Pending appeal, the first appellant/Yasin is reported to have died on 04.03.2023. In view of the death of the first appellant, this appeal is dismissed as abated, insofar as the first appellant.



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4. It is the case of the prosecution that PW1/Sub Inspector of Police received a call in his cellphone on 21.12.2019 at 10.30 a.m., wherein a secret information was given about the sale of ganja by the three accused, namely, Channu, Yasin and Mohamed Hussen. As per the information, A1 to A3 are in possession of ganja and selling the same near Srinivasapuram Railway Gate in Dio two-wheeler, bearing Registration No.TN-03-T-8068. The informant gave the details of the physical features and the dress colour of the accused.

5. PW1 recorded the information/Ex.P1 and after obtaining permission from the Inspector of Police/PW4, accompanied by Head Constable/PW2 and Charles, proceeded to the scene of occurrence. PW1, on reaching the scene of occurrence at 11.15a.m., found A1 to A3 with the same identity which was informed. On seeing the police, the accused tried to escape and even though A1 and A2 were caught, A3 escaped from the scene of occurrence.

6. On interrogation, the details of the accused were revealed. PW1



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sought the assistance of three independent witnesses, viz., Kumar, Suresh and Selvam, but they refused. PW1 informed the accused about their right to be searched in the presence of the Judicial Magistrate or a Government Gazetted Officer, but both of the accused consented to search. Ex.P2 and Ex.P3 are the search notices for A1 and A2. During search, A1 handed over the contraband ganja from the blue and grey colour checked plastic cover to PW1 and when weighed, it contained 1.500 kgs. Two samples of 50 grams were taken and packed in brown colour paper and named as S1 (MO2) and S2 (MO4). The remaining contraband was packed and named as P1 (MO1). The witnesses and the accused affixed their signatures in MO1, MO2 and MO4.

7. On seizure, PW1 prepared the seizure mahazar/Ex.P4 for the contraband and the two-wheeler/MO3. A1 and A2 were arrested and they were intimated the grounds of arrest. The arrest intimation of A1 and A2 are Ex.P5 and Ex.P6, respectively. In the presence of witnesses, PW2 and Charles, PW1 recorded the voluntary confession statement of A1. After returning to the police station with the accused and seized properties, PW1 registered the FIR/Ex.P7 under Section 8(c) r/w 20(b)(ii)(B), 25 and 29(1)



of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”).

8. The statements of PW2 and Charles, who accompanied them were recorded. The arrest memos of A1 and A2 are Ex.P8 and Ex.P9. PW1 forwarded the seized properties to the court through Form 95/Ex.P10 and prepared his special report under Section 57 of the NDPS Act/Ex.P11 and the same was submitted to PW4.

9. PW4 took up the investigation and forwarded the properties for chemical analysis. The request for chemical analysis is Ex.P13 and the statement of the chemical analyst/PW3 was recorded and the report of PW3 is Ex.P12. PW4 completed his investigation and filed the final report.

10. The trial court took up the case, issued summons to the accused and complied with Section 207 of Cr.P.C. and framed the charges under Section 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. On being questioned, the accused pleaded not guilty and stood trial.



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11. The prosecution examined PW1 to PW4 and marked Ex.P1 to Ex.P13 to prove the charges. After completion of prosecution evidence, when the accused were questioned under Section 313 Cr.P.C. about the incriminating materials available, they denied the same. The accused neither examined any witnesses nor marked any documents.

12. The trial court after considering the materials and arguments, convicted the appellants under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and acquitted both the accused under Sections 25 and 29(1) of the NDPS Act. The trial court acquitted the third accused and imposed sentence on the appellants as stated supra in Paragraph 2. Challenging the conviction and sentence, the appellants have preferred the above appeal.

13. The learned counsel for the appellants submitted that the identification of the appellants itself is doubtful, as the information recorded in Ex.P1 does not state anything about the identity or the colour of the dress worn by the appellants. Further, the search and seizure is also doubtful, as no statement of independent witnesses is recorded and examined. Moreover, the signature of the accused has not been obtained in seizure

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mahazar/Ex.P4.

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14. He further contended that the arrest memos of A1 and A2 [Ex.P8 and Ex.P9] are in a computer printed format and there is no possibility of preparing it in the place of occurrence i.e., near the railway gate. When the FIR/Ex.P7 was registered only after returning to the police station, the mentioning of the crime number in Ex.P.8 and Ex.P9 is doubtful and therefore no such search, seizure or arrest has taken place in the place of occurrence. The Material Objects 1, 2 and 4 were produced before the trial court only on 20.01.2020, when they were seized on 21.12.2019, which is fatal to the case of the prosecution.

15. However, after making the above submissions on merits, the learned counsel confined his submissions for reduction of sentence, considering the mitigating circumstances.

16. Per contra, the learned Government Advocate (Crl. Side) appearing on behalf of the respondent argued that PW1 on receipt of information, had recorded Ex.P1 and along with PW2 and Charles, had

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visited the place of occurrence and on identifying the accused, had conducted the search in due compliance to the provisions of the NDPS Act and recovered the contraband from the possession of the first accused.

17. The seizure mahazar/Ex.P4 has been signed by the witnesses and the accused have signed in MO1 to MO4. PW1 to PW4 were examined and they have given clear and cogent evidence, which proves the recovery of ganja from the possession of the appellants. The trial court having found that the appellants had been in possession of ganja with intermediate quantity, had convicted and imposed the sentence, which by itself is a lenient view and needs no interference.

18. Heard the rival submissions and perused the materials available on record.

19. PW1 received secret information on 21.12.2019 about the possession and sale of ganja by the three accused along with their identity and the vehicle. PW1 recorded the information/Ex.P1 and on obtaining permission from the Inspector of Police/PW4 proceeded to the place of

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occurrence. On identifying the accused, A1 and A2 were caught, but the third accused escaped from the scene of occurrence. PW1 sought the assistance of independent witnesses, who refused. PW1 informed the appellants about their right to be searched in the presence of Judicial Magistrate or Government Gazetted Officer as per Section 50 of the NDPS Act.

20. Ex.P2 and Ex.P3 are the intimation given to A1 and A2, who consented for search by PW1. Though it is contended that when Ex.P1 had not recorded anything about the identity of the accused and as such, the identity itself is doubtful, the same cannot be sustained for the reason that PW1 had clearly stated that he received the secret information about the physical features of the accused along with the dress colour, which he had kept in mind. Even though Ex.P1 had not recorded the colour of the dress with minute details, but the accused were found and identified in the informed place of occurrence.

21. As the independent witnesses have refused to assist, PW1 has proceeded with the search and seizure in the presence of PW2 and Charles. During search, the first appellant had handed over the ganja from the blue

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and grey colour checked plastic cover to PW1 and it weighed 1.500 kgs.

After drawing two samples of 50 grams each, noted as S1 (MO2) and S2 (MO4), the balance ganja was sealed and marked as P1 (MO1). Ex.P4 is the seizure mahazar, seizing the contraband and the vehicle.

22. Though it is contended that Ex.P4 was not prepared at the scene of occurrence, as it does not contain the signature of the independent witnesses and also the signatures of the accused, however after seizure of the contraband, P1 (MO3), the accused have signed in MO1, MO2 and MO4 at the scene of occurrence. The seizure of the contraband at the scene of occurrence is established and the non-availability of signature of the accused in Ex.P4 does not in any way help the appellants.

23. PW1 and PW2 had clearly given cogent evidence to the effect that they had taken the laptop and prepared the arrest memos/Ex.P8 and Ex.P9 in the printed format, as it was entered into the laptop and the printout was taken in the shop, which was just 5 meters away. PW1 and PW2 had also explained the details of furnishing the crime number in Ex.P8 and Ex.P9 and after registering the case, Form 95/Ex.P10 along with the



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accused were sent to remanding court on the same day i.e., on 21.12.2019.

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24. MO1, MO2 and MO4 were produced before the trial court and it has been recorded that there was no damage or leakage in the property. On production of the contraband by PW4 along with the request for chemical analysis, it has not been recorded that S1, S2 and P1 were tampered or damaged or there was any variation in weight. Therefore, the trial court concluded that there was no prejudice due to some delay in producing it before the court.

25. The evidence of PW1 to PW3, coupled with the chemical analysis report/Ex.P12, confirms the materials seized from the appellants is ganja. The procedures contemplated under the Act for search and seizure have been scrupulously followed and the charge against the appellants has been proved through clear and cogent evidence of PW1 to PW4, which inspires the confidence of this court. Nothing has been elicited in the cross examination, adverse to the case of the prosecution.



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26. Though the entire contraband has been recovered from the possession of A1, finding that A2 is related to A1, the trial court had convicted A2 on the ground that he had conscious possession of contraband by A1. Therefore, even though no material has been seized from A2 since he was found along with A1, the conscious possession was presumed and thereby convicted the second appellant/A2.

27. When the presence of the second appellant/A2 along with the first appellant/A1 at the place of occurrence is established and he was arrested, then it has been rightly concluded by the trial court that he is presumed to be in conscious possession of the contraband and therefore, the decision of the trial court in convicting the second appellant/A2 is to be sustained. On reappraising the entire evidence, this court does not find any infirmity warranting interference in the decision of the trial court.

28. Insofar as the sentence imposed on the second appellant/A2, it is submitted by the learned counsel that he was 21 years old at the time of occurrence and he has no previous case. Further the learned counsel submitted the second appellant was in custody for a period of 65 days

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during trial and was in further custody of 25 days pending appeal and he was under incarceration for a total period of 90 days.

29. Considering the mitigating circumstances that the contraband ganja measuring 1.500 kgs, which is little more than the small quantity has been recovered from A1 and there was no recovery from the second appellant/A2, second appellant did not play any active role except found with A1 at the time of seizure, he was young aged 21 years at the time of occurrence, had no other previous case against him and further A3 having been acquitted and A1 had died pending appeal, this Court is of the considered opinion that the sentence imposed could be modified.

30. Accordingly, the sentence imposed by the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, in C.C.No.141 of 2020 dated 06.04.2022, against the second appellant/A2, is reduced from one year rigorous imprisonment to that of the period already undergone by him. However the sentence of fine is increased from Rs.15,000/- to that of Rs.50,000/ and the enhanced fine amount shall be paid within a period of four weeks from the date of receipt of a copy of

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this order, in default to undergo a period of three (3) months simple imprisonment. The confiscation of the vehicle is confirmed.

31. In the result, this Criminal Appeal stands *partly allowed* insofar as the second appellant/A2 and dismissed as abated in so far as first appellant/A1.

24.11.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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To

- 1.The Special Judge,
II Additional Special Court
for Exclusive Trial of Cases under NDPS Act,
Chennai.
- 2.The Inspector of Police,
H1 Washermenpet Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
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