



Crl.A.No.276 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2025

Pronounced on : 31.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.276 of 2023

Poorna Chandra Pangi

..... Appellant

Vs

The Inspector of Police,
Rep.by state NIB CID,
Chennai.

..... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence of imprisonment and fine imposed in C.C.No.65 of 2020 on the file of the I Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai.

For Appellant : Mr.C.Rajan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



J U D G M E N T

WEB COPY

This Criminal Appeal has been preferred as against the judgment passed in C.C.No.65 of 2020 on the file of the I Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai thereby convicting the appellant for the offences under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.

2. The case of the prosecution was that on 21.03.2021 at about 6.00 hrs, the respondent had received the information from an informant that the appellant from Andhra Pradesh was trafficking 24kgs of Kanja near Central Railway Station. After receiving the secret information, the respondent obtained permission from the Superior Officer and proceeded to Central Railway Station at about 2.20 a.m on 21.03.2021 along with his team. The appellant was carrying white polythene bag in hand and he was identified by the informant. Thereafter, the appellant was informed about his right under Section 50 of NDPS Act and the search was carried out. He had handed over white colour gunny bag containing 24 kgs of Kanja. After lifting two samples weighing 50 grams each and after completion of all formalities as per the procedure contemplated under the NDPS Act, the respondent prepared a special report as contemplated under Section 57 of the NDPS Act. Thereafter the appellant and the contraband were produced before the Investigating Officer



CrI.A.No.276 of 2023

after registration of FIR in Crime No.94 of 2019 for the offences punishable under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. After registration of FIR, the appellant was arrested and remanded in the judicial custody. After completion of investigation, the respondent filed a final report and the same was taken cognizance by the trial court.

3. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.5 and marked Ex.P1 to Ex.P11. The prosecution also produced material objects i.e. MO.1 to MO.3. On the side of the defence no one was examined and no documents were marked before the trial court. On perusal of oral and documentary evidences, the trial court found the appellant guilty for the offences punishable under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act and sentenced him to undergo ten years of rigorous imprisonment and also imposed a fine of Rs.1,00,000/- (Rupees One Lakh) in default, to undergo a six months of rigorous imprisonment. Aggrieved by the same, the present appeal has been filed.

4. Learned counsel appearing for the appellant would submit that the prosecution failed to follow any of the procedures as contemplated under the NDPS Act. Though the appellant was served with search memo and obtained a



Crl.A.No.276 of 2023

consent as contemplated under Section 50 of NDPS Act, the appellant was not

explained in the language known to him. The appellant is hailing from Andhra Pradesh and as such he did not know language of Tamil and English. But there was no proof to show that the appellant was explained in the language known to him by him and there was no endorsement to that effect from the appellant. Further, the respondent violated the guidelines issued by the Narcotic Control Bureau which forms part of the legal procedures. Further, the property registered was not maintained by the respondents and the respondents also failed to produce for proof of safe custody and possession of the contraband before Special Court which had not been explained by the prosecution with valid reason. The respondent also did not produce any train ticket of the appellant to prove that he came from Andhra Pradesh by train. As per the secret information, the appellant would have come to the railway station at about 6 a.m. However, the respondents identified the appellant at about 3.00 a.m itself. There is no proof to show that the appellant was identified in the Central Railway Station. Further, the appellant was not explained the charges as well as the statement under Section 313 of Cr.P.C in the language known to him. Therefore, overall the prosecution miserably failed to prove the charge and as such the trial court ought not to have convicted the appellant.



Crl.A.No.276 of 2023

WEB COPY

5. Per Contra, the learned Additional Public Prosecutor submitted that except the provision under Section 42 and 50, and all other provisions are directory in nature. Therefore, small discrepancies in the procedural aspect cannot be fatal to the case of the prosecution. The appellant was found in possession of kanja weighing 24 kgs and it was of a commercial quantity. The prosecution proved the charge and as such the trial court rightly convicted the appellant and the same does not warrant any interference by this Court.

6. Heard the learned counsel appearing on either side and perused the materials placed on record.

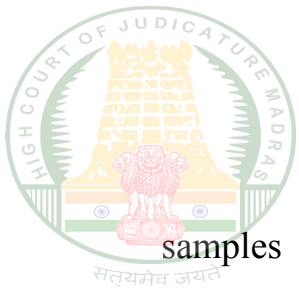
7. A perusal of the records reveals that the appellant was found in possession of kanja weighing 24 kgs at Central Railway Station. After arrest of the appellant, the contraband was produced before the Magistrate and thereafter, it was produced before the trial court with delay of 9 days. The procedure contemplated for sampling of Narcotic Drugs and Pshychotrpic substances under NDPS Act, 1985 in Standing Order 1/88 & 1/89 was not followed. Further, there is a log book entry and the same was not produced



CrI.A.No.276 of 2023

before the Court. Admittedly, the appellant did not know the language of Tamil or English. He is hailing from Andhra Pradesh and as such the known language of the appellant is only Telugu. On perusal of the search memo it does not reveal that the appellant was explained in the language known to him. There was no endorsement to the effect that the search memo was explained to him in Telugu. Further, on perusal of the information received from the endorsement, it is revealed that the information mentions only the date. It does not contain the time, date and train particulars. Therefore, the identification of the appellant and that he was found in possession of contraband in platform no.6 is doubtful. Further, no independent witness was examined by the prosecution for the search, seizure and arrest. Further, a perusal of the records reveals that a competent officer has to prepare the inventory of Narcotic Drug with adequate particulars and it has to be produced before the Magistrate for the purpose of certifying the purpose of inventory taking relevant photographs by certifying them as true.

8. In the case on hand, no certificate was obtained from the concerned Magistrate and as such it is clear violation of Section 52A of the NDPS Act. The certificate of the Magistrate that lacks any inventory, photographs or list of



CrI.A.No.276 of 2023

samples would not constitute any primary evidence. Further, the learned counsel for the appellant would submit that the Lab report does not have adequate details about the test. It is not enough for the chemical examiner to merely state his opinion as to whether there is concentration of alcohol in the sample of the blood analysis or not. The report of the chemical examiner must show the tests or experiments performed by him, the factual data reveal by such tests or experiments and the reasons leading to the information of the opinion from such factual data. Otherwise, the report would have no value as a piece of evidence as held in the case of ***Suleman Usamn Menan v. The State of Gujarat*** reported in ***Manu/GJ/0143/1961*** under the NDPS Act to recover the chemical analysis are very important stages in the investigation of the offence. In other words, both are beginning and the end of the investigation. If any laxity is executed in these important stages of recovery and analysis, the real culprit will escape. The court must also be aligned to the situations where innocent persons are liable to be implicated and subject to prison.

9. In the case on hand, as rightly pointed out by the learned counsel for the appellant, the laboratory report do not contain the method of experiment and the test which was conducted to find out the value of kanja. Further, there

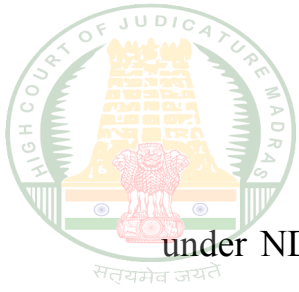


Crl.A.No.276 of 2023

was a delay in producing the seized contraband to the Special Court with delay of 9 days. Section 52A of the NDPS Act mandates safe custody of the contraband and if there is any violation, it will lead to suspect tampering.

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 appellant cannot be sustained and is liable to be set aside.

11. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed by the Special Judge, I Additional Special Court for exclusive trial of cases under NDPS Act, Chennai in C.C.No.65 of 2020 dated 21.03.2023 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act is hereby set aside. The appellant is acquitted of all charges in C.C.65 of 2020 on the file of the learned I Additional Special Court for exclusive trial of cases



CrI.A.No.276 of 2023

under NDPS Act, Chennai. Fine amount, if any paid, shall be refunded to the
appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

31.07.2025

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order

Nhs

To

1. The learned I Additional Special Court
for Exclusive Trial of Cases Under the NDPS Act, Chennai
2. The Inspector of Police,
NIB CID,
Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai-600 104.
4. The Superintendent,
Central Prison Puzhal-I,
Chennai.



WEB COPY



Crl.A.No.276 of 2023

G.K.ILANTHIRAIYAN. J.

Nhs

Pre-delivery Judgment in
Crl.A.No.276 of 2023

31.07.2025