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Crl.A.No.1262 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2025
PRONOUNCED ON : 16.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1262 of 2022
and Crl.M.P.No.19447 of 2023

V.Vasantha Kumar

... Appellant

Vs.

State rep. by
The Inspector of Police,
NIB-CID,
Chennai.
(Crime No.8 of 2020)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records to set aside the judgment dated 29.06.2022 in C.C.No.92 of 2020 on the file of the Principal Special Court under EC and NDPS Act, Chennai.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



Crl.A.No.1262 of 2022

JUDGMENT

WEB COPY This Criminal Appeal is filed to set aside the impugned judgment in C.C.No.92 of 2020 dated 29.06.2022 on the file of the learned Principal Special Judge, EC and NDPS Court, Chennai.

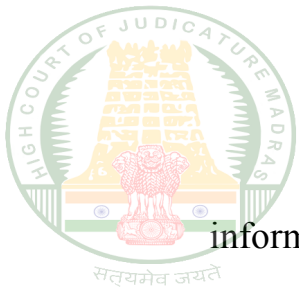
2.The appellant/accused in C.C.No.92 of 2020 was convicted by the Trial Court by judgment dated 29.06.2022 and sentenced him to undergo twelve years imprisonment and to pay a fine of Rs.1,50,000/-, in default to undergo six months simple imprisonment for the offence under Section 8(c) r/w. 22(C) of Narcotic Drugs and Psychotropic Substances Act (NDPS Act), to undergo seven years imprisonment and to pay a fine of Rs.50,000/-, in default to undergo six months simple imprisonment for the offence under Section 8(c) r/w. 22(C) of NDPS Act and to undergo seven years imprisonment and to pay a fine of Rs.50,000/-, in default to undergo six months simple imprisonment for the offence under Section 29(1) of NDPS Act.

3.The case of the prosecution is that on 22.02.2020 at 3.00 a.m., the



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respondent received information that at about 6:30 P.M. three persons are going to come in two bikes bearing registration numbers, TN-13-M-0288 blue colour Dominor bike and Tn-05-AR-7670 black colour Pulsar bike and that they were in possession of MDMA tablets, LSD stamps, Methamphetamine and ganja for trafficking. Upon receiving this information, it was recorded and sent to the Deputy Superintendent of Police, Kanchipuram, who was in charge as per section 42 of the NDPS Act, who reviewed the information and gave permission at about 5:15 P.M. Thereafter, the respondent police, along with their team and apparatus, reached the scene of the occurrence at about 6:30 P.M and positioned near the NISSI Supermarket in Senthil Nagar, Kolathur. Two bikes arrived, in one bike two persons and in the other bike, one person was spotted. They were intercepted and questioned. The person riding the Pulsar bike was Vasantha Kumar/A1, the pillion rider was Nishanth Rayan/A2 and the person riding the Dominor bike was Balachandar/A3. Two public, namely, Karthik and Manivannan called as witnesses for the search, but they refused. Thereafter, in the presence of police personnel, Head Constable Manimaran and Sudhakar, the persons were enquired and they were



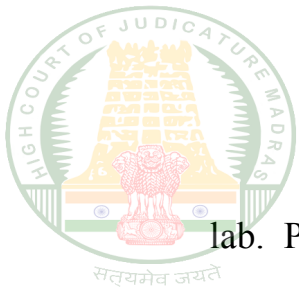
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informed about their right to be searched before a Magistrate or a gazetted officer, but they declined and agreed to be searched by the police party. In the presence of witnesses, A1 produced four zip-lock covers from his right pant pocket. In one zip lock cover, 22 blue-colored tablets, in the name of NASA found. Preliminary tests conducted, which turned positive for MDMA tablets, weighing 9.01 grams, again it was repacked and sealed. The second zip lock cover opened, in which 17 tablets in the name of "CALL SECURE" found, it was blue in color, which turned positive for MDMA weighing 6.99 gms, again the same was repacked and sealed. The third zip lock cover opened which contained 100 LSD stamps with smiley embossed and 100 stamps which were blue in color, in total 200 LSD stamps, weighing 3.56 gms found. Thereafter, it was repacked and sealed. In the fourth zip lock cover, a white stone like substance found, it tested positive for Methamphetamine, weighed around 20 gms, thereafter it was packed and sealed. All the substances were seized by 7:00 pm. Thereafter, the second accused was searched, who produced two zip lock covers from his right pant pocket. In one cover, 11 blue-colored tablets with TELEGRAM embossed found and it confirmed to MDMA, weighing 4.35



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gms, which was repacked and sealed. In another zip lock cover, 50 nos. of LSD stamps with smiley marks found, which weighed 0.83 gms, the same was repacked and sealed. The third accused, Balachandar was enquired and from the petrol tank cover, he produced a polythene bag containing ganja, which was seized and repacked. The contrabands and two bikes seized. The accused were enquired who gave confessions confirming the possession and trafficking of narcotic substances. The search, seizure, and confessions all recorded at the scene of the occurrence, using the laptop of PW1 and printouts taken from the mobile printer. The accused, witnesses and the seizure officers all signed in the scene of occurrence. The accused arrested and the seized articles were taken to the police station and FIR registered. During the remand, the seized articles and the accused produced before the Magistrate, who directed the seized contrabands to be retained by the respondent police and to produce the same before the Special Court. Section 57 report sent to the Superior Officer and the seized contrabands were produced before the Special Court on 16.03.2020. Thereafter, the contrabands produced before the forensic laboratory. PW2 who was a witness to the occurrence and seizure taken the contrabands to the forensic



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lab. PW3, the Deputy Director of the forensic laboratory examined the contraband and gave a report, confirming that the contraband is of narcotic and psychotropic substances. PW4 took up further investigation, recorded the statements, and filed a charge sheet in this case. During trial, PW1 to PW4 were examined, Ex.P1 to Ex.P9 marked and MO1 to MO11 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant and other accused.

4.The contention of the learned counsel for the appellant is that in this case all statutory conditions under Sections 42, 50, 52, 52A and 57 violated. In this case, only four witnesses examined, three of them are police personnel, out of them, two are Inspector of Police namely PW1 & PW4, one Head Constable/Manimaran and P.W.3 is the Deputy Director, Forensic Department and P.W.4 is the Investigating Officer. It is admitted by P.W.1, P.W.2 that the occurrence took place in a public road, but no public witness examined. The reason given by P.W.1 is that two persons Manivannan and Karthik called to be witness, but they refused forgetting for the moment that



the entire seizure activities continued there for more than seven hours.

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P.W.1 and P.W.2 admit that it is a busy road with several commercial establishments and hundreds of people passed by when the accused were interrogated. P.W.1 admits that near the scene of the occurrence, NISSI supermarket is there where there is a CCTV camera and other commercial establishments also have CCTV cameras. Further, near the scene of the occurrence there is a traffic booth in which there are multiple CCTV cameras. None of these CCTV recordings produced. Further, P.W.1/Inspector of police confirms that he took his laptop along with him and using the same, he prepared all the documents, Ex.P2 to Ex.P13 at the scene of the occurrence. It was specifically suggested that these documents were doctored and the date and time which normally appears in the computer/laptop printout has been withheld since it would go against the case of the prosecution. The specific contention of the appellant is that the arrest and seizure not carried out on the date and time projected and not in the scene of occurrence, as projected by the prosecution. He further submitted that though P.W.1 would state that he is still having the laptop and printer with him despite questioning the authenticity and veracity of the



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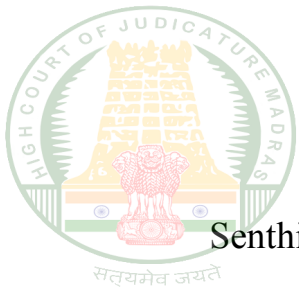
printout, the same not produced for forensic examination. P.W.1 further confirms that in the hard drive of the laptop all the details available. Had that it been so and produced, the authenticity of Ex.P2 to Ex.P11 and Ex.P13 can be said to be proved. P.W.1 admits that he has not taken any written permission to use the laptop and mobile printer. He further submits that in NIB office computers are available and there is a computer operator present. P.W.4, Deputy Superintendent of Police confirms that there is no permission granted to anybody to use their private laptops for investigation. He further confirms that in this case, P.W.1 not produced his laptop or printer except for producing the printouts said to have been taken out from it. In view of the same, as per the Information Technology Act and Section 65B of the Indian Evidence Act, the documents not proved. Ex.P2 to Ex.P11 and Ex.P13 cannot be considered as primary documents and documents not proved in the manner known to law. He further submitted that the seizure is said to have taken place on 22.02.2020 at night hours, the arrest of the accused was shown on 22.02.2020, though an explanation given that the properties are produced before the Magistrate at the time of remand, but there is no record for the same. On the other hand, P.W.2 admits that the



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contraband was kept in the NIB Police Station and thereafter produced before the Special Court on 16.03.2020. During the interregnum period, no documents or records produced to show that the chain of custody was intact and secure. He further submitted that Ex.P2 is a notice projected to be served to the accused under Section 50 of the NDPS Act. This notice is a composite notice to all three accused, which the Apex Court held to be bad in law. In this case, admittedly samples not took in the presence of a Magistrate. Hence, it is in clear violation of Section 52A of the NDPS Act and the dictum laid down in the case of *Union of India vs. Mohanlal and others* reported in **(2016) 3 SCC 379** not followed. He further submitted that A2 and A3 were acquitted by this court in Crl.A.No.778 of 2022 and Crl.A.No.486 of 2023 dated 28.06.2023. The appellant is also similarly placed. Hence prayed for acquittal.

5.The learned Government Advocate (Crl. Side) filed his counter and submitted that P.W.1 along with P.W.2, Head Constable and Manimaran, Head Constable attached to NIBCID, Chennai, after getting permission from higher officials went to the scene of occurrence i.e., Chennai, Kolathur,



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Senthil Nagar, Near NISSI Super Market. P.W.1 and his team mounted surveillance over the place and found that the Appellant/A1 and co-accused (A2 and A3) were in possession of MDMA (NASA) (22 tablets) 9.01 gms, MDMA (Call Secure 17 tablets) 6.99 gms, MDMA (Telegram 11 tablets) 4.35 gms, total 50 tablets totalling 20.35 gms, Rs.1,00,000/-LSD Stamps (250) 4.39 gms, Rs.2,50,000/-, Methamphetamine 20 gms, Rs.80,000/-, Ganja 2.5 Kg, Rs.25,000/-, Total Value Rs.4,55,000/-. While so P.W.1 approached the accused and informed about their rights to be searched/examined in front of the concerned Magistrate as per Section 50 of NDPS Act and followed all procedures. The accused did not choose to be produced before the Magistrate for examination and shown their willingness to be examined by P.W.1. Thereafter, P.W.1 examined them and found that they are in illegal possession of contrabands. Immediately, P.W.1 seized contrabands under cover of seizure mahazar and arrested three accused in the presence of police witnesses since independent witnesses refused to be mahazar witness and recorded their statements. Thereafter, the arrested appellant/accused and his co-accused along with seized materials were brought to the respondent police station. He would submit that



P.W.1/Inspector of Police clearly speaks about the receipt of secret information, recording the same and submitting to the Superior Officer.

Thereafter on getting permission, he went to the scene of occurrence along with his team, namely, PW2 and another Head Constable, Manimaran. From the accused, the above said articles seized and these articles are narcotics and psychotropic substances, as proved by the evidence of P.W.3 by report Ex.P19. Further, the accused were carrying commercial quantity and in this case, the accused had not probablized the defense by producing any positive evidence or by cross examination. On the other hand, they attempted to pick holes in the investigation. It is seen that P.W.1 invited two private individuals to be witnesses and when they refused, left with no other option the search was immediately completed. All the exhibits, Ex.P2 to Ex.P11 and Ex.P13 prepared at the scene of occurrence all produced along with the accused during remand. The documents as well as the contraband produced before the Remanding Magistrate and thereafter produced before the Special Court. The appellant raised same grounds during trial and the trial court found that Ex.P1, Section 42 report, test memo, seizure mahazar and search memo all typed printouts. Hence it cannot be termed as a secondary



evidence and therefore it needs no authenticity. He further relying upon

Section 61 of the Indian Evidence Act held that the content of document may be proved either by primary or secondary evidence. Hence for technical reasons the appellant's contention for not following Section 65B of the Indian Evidence Act would not enure any favour to the appellant. Further the Trial Court finding that the appellant and other accused were in possession of commercial quantity of contraband which is of serious in nature, convicted the appellant. Hence, prayed for dismissal. He fairly submitted that the co-accused in this case namely A2 & A3 were acquitted by this Court.

6.Considering the submissions made and on perusal of the materials, the admitted position is that in this case four witnesses examined, out of which, P.W.1, P.W.2 and P.W.4 are Police Personnel and P.W.3 is the Deputy Director of Forensic Department. PW1, PW2, Head Constable and another Head Constable Manimaran on receiving information went to the scene of occurrence, kept mounting over the area, found the appellant and co-accused, intercepted them, enquired, conducted search, and seized the



contraband. PW1 admits that Ex.P1 to Ex.P11 and Ex.P13 all prepared at

the scene of occurrence using his personal laptop and mobile printer. He

admits that he has no written permission to use his personal laptop and

mobile printer to aid his investigation. PW4, Deputy Superintendent of

Police, Investigating Officer confirms that in NIB, there is no permission for

the Investigating Officer to use their personal laptops or printers during

investigation and further admits that PW1 not produced the laptop and

printer. PW4 confirms that only the printouts of Ex.P2 to Ex.P11 and

Ex.P13 were handed over to him. Admittedly, these documents are

computer printouts. In view of the Information Technology Act and Section

65B of the Indian Evidence Act, any computer output has to be

authenticated and certified in the absence of primary evidence being

produced. The printouts are secondary evidence. The Apex Court in the case

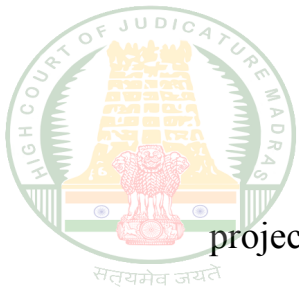
of *Arjun Panditrao Khotkhar vs. Kailash Kushanrao Gorantyal and*

others reported in **(2020) 7 SCC 1** clearly held that computer output in the

nature of secondary evidence in the absence of Section 65B certificate

cannot be taken in evidence. Thus, Ex.P2 to Ex.P11 and Ex.P13 lack

credibility, authenticity and acceptance. Further, it is seen that Ex.P2 is



projected as compliance of Section 50 of the NDPS Act which is a statutory condition.

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7.The Apex Court in the case of ***State of Rajasthan vs. Parmanand and another*** reported in ***(2014) 5 SCC 345***, 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



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*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.”*

8. In the present case, it is a composite notice. Hence, Section 50 of NDPS Act not complied. It is also to be seen that in this case, samples of the contraband not taken in the presence of a Magistrate, which is in clear violation of Section 52A and the dictum laid down by the Apex Court in **Mohanlal's** case. Furthermore, the seizure is said to have taken place on 22.2.2020, but the seized contraband produced before the Special Court only on 16.3.2020. No chain of custody confirming proper and secure storage and custody produced. Added to this, in this case, it is admitted by P.W.1 and P.W.2 that the scene of occurrence is a public place, busy throughout the day, there are many commercial establishments with hundreds of people and vehicles passing by. Admittedly P.W.1, P.W.2 and Head Constable Manimaran were at the scene of occurrence for more than seven hours and the reason given for non-examination of private persons cannot be accepted. In NDPS cases, the Apex Court has time and again



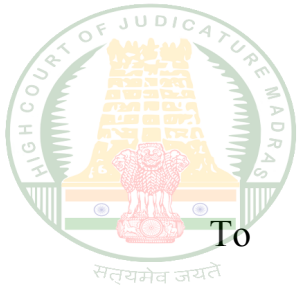
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reiterated that the procedures contemplated under Sections 42, 50, 52, 52A, and 57 of NDPS Act all to be strictly followed, without any deviation or violation. On the facts of the above case, it is clear that these statutory conditions followed in breach. It is also to be seen that in this case, A2 and A3 already been acquitted by this court. Hence this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.

9.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 29.06.2022 in C.C.No.92 of 2020 passed by the learned Principal Sessions Judge, Principal Special Court under EC and NDPS Act, Chennai. The appellant is acquitted. The appellant to be released forthwith. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded. Consequently, connected miscellaneous petition is closed.

16.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

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- 1.The Inspector of Police,
NIB-CID,
Chennai.
- 2.The Principal Special Judge,
EC and NDPS Court,
Chennai.
- 3.The Superintendent,
Central Prison-I, Puzhal,
Chennai – 600 066.
- 4.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.1262 of 2022

M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

Crl.A.No.1262 of 2022

16.09.2025