



*Crl.A.Nos.1337 & 994 of 2024
& Crl.A.No.23 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM:

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

Crl.A.Nos.1337 & 994 of 2024 & Crl.A.No.23 of 2025

Crl.A.No.1337 of 2024

Shahul Hameed

... Appellant

Vs

State represented by:-
The Inspector of Police, NIBCID,
Chennai. Chennai District.
Crime No.36 of 2022

... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside his conviction made in the judgment dated 25.06.2024 in C.C.No.29 of 2023 on the file of the learned Principal special court under EC & NDPS Act Chennai and acquits her from the offences.



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WEB COPY Crl.A.No.994 of 2024

Akbar Batsha

... Appellant

Vs

State represented by:-
The Inspector of Police, NIBCID,
Chennai. Chennai District.
Crime No.36 of 2022

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside his conviction made in the judgment dated 25.06.2024 in C.C.No.29 of 2023 on the file of the learned Principal Special Court under EC & NDPS Act Chennai and acquits her from the offences.

Crl.A.No.23 of 2025

Rahuman

... Appellant

Vs.

State represented by:-
The Inspector of Police, NIBCID,
Chennai. Chennai District.
Crime No.36 of 2022

... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 25.06.2024 passed by the learned Principal Special Court under EC & NDPS Act Chennai in C.C.No.29 of 2023.



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For Appellant
(in Crl.A.No.1337 of 2024) : Mr.S.Kasirajan

For Appellant
(in Crl.A.No.994 of 2024) : Mr.T.S.Sasikumar
for Samson

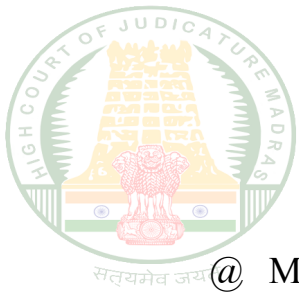
For Appellant
(in Crl.A.No.23 of 2025) : Ms.S.Shiney

For Respondent : Mr.S.Rajakumar
(In all Criminal Appeals) : Additional Public Prosecutor

COMMON ORDER

These Criminal Appeals have been filed by A-1 to A-3 in the same trial in C.C.No.29 of 2023 on the file of the learned Principal Special Court under EC & NDPS Act, Chennai for the offences punishable under Sections 8(c) r/w 22(c) & 29(1) of NDPS Act in respect of A-1 & A-2 and 8(c) r/w 22(b) & 29(1) of NDPS Act in respect of A-3.

2. The case of the prosecution was that on 19.07.2023, when the P.W.1 was in station she received a secret information at about 6 a.m near Kaladipettai Bus stop, Tiruvottriyur that three persons who were known to the informant going to be involved in illicit trafficking of Ice

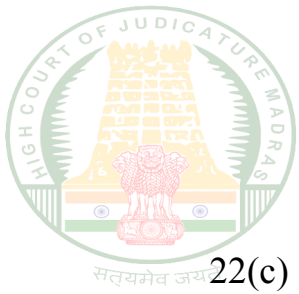


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@ Methamphetamine for the purpose of selling. The said information was passed to the Superior Officer. After obtaining permission from the Superior Officer, the P.W.1 and her team visited the scene of crime and identified the accused as per the secret information and they were served with search notice. They consented to make a search by the P.W.1. On search, the accused were found in possession of 60 grams of Methamphetamine from A1 & A2 and 12 grams of Methamphetamine from A3. After completion of formalities, the accused were brought to the police station once and FIR was registered in Crime No.36/2022 for the offences made under Sections 8(c) r/w 22(c) & 29(1) & 8(c) r/w 22(b) & 29(1) of NDPS Act. 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 the charges to home, the prosecution had examined P.W.1 and marked exhibits Ex.P1 to Ex.P16. On the side of the accused no one were examined and no documents were marked before the trial court. On perusal of the oral and documentary evidences, the trial court found A-1 & A-2 guilty for the offences under Section 8(c) r/w



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22(c) & 29(1) of NDPS Act and A-3 for the offences under Section 8(c) r/w 22(b) of NDPS Act and sentenced them to undergo 12 years of rigorous imprisonment each and also to pay a fine of Rs.1,20,000/- each however, the said sentences were directed to run concurrently.

4. The learned counsel appearing for the appellant in all the appeals submitted that the search memo was jointly issued to all the accused and a joint consent was obtained. It is a clear violation of the provision under Section 50 of the NDPS Act. The learned counsel in support of his contentions, relied upon the judgment passed by the Hon'ble Supreme in case of *State of Rajasthan Vs.Parmanand & Anr* in Crl.A.No.78 of 2005 reported in **2014 (5) SCC 345**.

5. The learned Additional Public Prosecutor appearing for the respondent submitted that though there are certain contradictions and discrepancies on the part of the prosecution, it would not prejudice the right of the accused. All the accused persons were in conscious possession of the contraband totally weighing 132 grams of Methamphetamine. All the mandatory provisions were duly complied



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with and as such the prosecution clearly proved the charges and the trial court had rightly convicted the appellants. Therefore, it does not require any interference by this Court.

6. Heard the learned counsel for the Appellants as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

7. The only ground raised in these appeals is that the prosecution failed to comply the mandatory provision under Section 50 of NDPS Act. After receipt of the secret information, the respondent obtained permission from the Superior Officer. Thereafter, the P.W.1 and her team went to the scene of crime and found that the accused persons were in possession of Methamphetamine totally weighing 132 grams. The first accused was in possession of 60 grams, the second accused was in possession of 60 grams and the third accused was in possession of 12 grams of Methamphetamine. The prosecution has stated that all three accused were under conscious possession of the contraband namely Methamphetamine and the same was seized from three accused under



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separate seizure mahazar. But all the accused persons were jointly issued search notice and joint consent was obtained from them which was marked as Ex.P2. A perusal of Ex.P2 reveals that the accused have consented jointly for the search by P.W.1 and her team. It is a clear violation of mandate Provision under Section 50 of NDPS Act. In this regard, the Hon'ble Supreme Court in case of ***State of Rajasthan Vs.Parmanand & Anr*** in Crl.A.No.78 of 2005 reported in **2014 (5) SCC 345** has held as under:-

“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 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



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the Punjab & Haryana high Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears 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.I Parnanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.”

8. In view of the above Judgment, the prosecution miserably failed to prove the charges and as such the benefit of doubt is in favour of the accused. Hence, the judgment passed by the trial court cannot be sustained.

9. 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 the accused. In the present case, the prosecution has failed to discharge its burden convincingly and the



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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 the same is liable to be set aside.

10. Accordingly, the Criminal Appeals are allowed and the conviction and sentence imposed by the learned Principal Special Court under EC & NDPS Act, Chennai in C.C.No.29 of 2023 dated 25.06.2025 is hereby set aside. The appellants are acquitted of all charges in C.C.No.29 of 2023 on the file of the learned I Additional Special Court for exclusive trial of cases under NDPS Act, Chennai. Fine amount, if any paid, shall be refunded to the appellants forthwith. Bail bonds, if any executed, shall stand cancelled.

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

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G.K.ILANTHIRAIYAN, J.

Nhs

To

1.The Principal special court under EC & NDPS Act,
Chennai.

2.The Inspector of Police, NIBCID,
Chennai, Chennai District.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

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