



Crl.A.No.1340 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2025

CORAM

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

Crl.A.No.1340 of 2023

Ajah Godwin Chukwu

... Appellant

Vs

The State represented by
The Inspector of Police,
NIBCID, Chennai.

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, to call for the records pertaining to the file of the learned I Additional Special Judge, Special Court under EC and NDPS Act, Chennai 104 in C.C.No.59 of 2020 and set aside its Judgment dated 28.04.2023.

For Appellant : Mr.C.S.S.Pillai

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in C.C.No.59 of 2020 dated 28.04.2023 by the I Additional Special Judge, Special Court under EC and NDPS Act, Chennai 104, thereby convicting the appellant for the offences punishable under Sections 8(c) read with 21(c) and Sections 8(c) read with 20(b)(ii)(B) of the NDPS Act.



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2. The case of the prosecution is that on 01.02.2019 at about 10.00 a.m in Kabaleeswarar Nagar Junction, East Coast Road, Neelangarai, Chennai, on interception of the accused who was riding his two wheeler was found in possession of 7 grams of heroin, 103 grams and 27 grams of Cocaine, 1.200 kgs of ganja to sell the same to the third parties. Hence, the complaint.

3. On receipt of the complaint, the respondent registered FIR in Crime No.11 of 2019 for the offences punishable under Sections 8(c) r/w 21(b), 8(c) r/w 21(c), 8(c) r/w 20(b)(ii)(B), 8(c) r/w 25 and 8(c) r/w 28 of the NDPS Act. After completion of investigation, final report was filed and the same was taken cognizance by the Trial Court in C.C.No.59 of 2020.

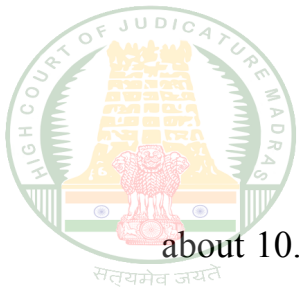
4. In order to bring home the charges, the prosecution had examined PWs.1 to 4 and marked Exs.P1 to 14. The prosecution had produced material objects which were marked as M.O.1 to M.O.6. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offences punishable under Sections 8(c) read with 21(c) and Sections 8(c) read with 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo one year rigorous



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imprisonment and also imposed fine of Rs.10,000/-, in default, to undergo three months rigorous imprisonment for the offence punishable under Section 8(c) read with Section 21(c) of the NDPS Act and also sentenced him to five years rigorous imprisonment and also imposed fine of Rs.50,000/-, in default, to undergo six months rigorous imprisonment for the offence punishable under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that no procedure as contemplated under the NDPS Act was followed by the respondent. The respondent received a secret information and recorded in the general diary. However, the respondent failed to enter the general diary information in the FIR. Further, the secret information was received at about 08.00 a.m, on 01.02.2019. It was recorded in the general diary and permission was obtained from the superior officer to go to the place of occurrence. At about 09.00 a.m, 01.02.2019, the respondent and his team reached the scene of crime and found the appellant. After issuance of notice, the respondent made a search. Thereafter, the petitioner was issued with arrest intimation on 01.02.2019 at about 10.30 hrs and he was also issued arrest card and it contains Crime No.11 of 2019. It shows the date and time of arrest as 01.02.2019 at



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about 10.00 hrs. The arrest memo was served on the appellant on 01.02.2019 at

about 10.30 hrs and it also contains crime number. The seizure mahazer was recorded at 15.00 hrs on 01.02.2019. Therefore, the case of the prosecution is not believing one and in order to foist a false case as against the appellant, the respondent registered the FIR.

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that the small discrepancies cannot be fatal to the case of the prosecution. As per the secret information, the accused was found in possession of contraband, which was of commercial quantity. PW.1 categorically deposed about the entire process of arrest and as such, the prosecution had categorically proved the charge. Therefore, the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. A perusal of records revealed that the secret information was



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marked as Ex.P1, the search notice was marked as Ex.P2, the seizure Mahazer

was marked as Ex.P3, the arrest intimation and arrest card were marked as

Ex.P4 and Ex.P5, the arrest intimation memo was marked as Ex.P6 and the

special report recorded under Section 57 of NDPS Act was marked as Ex.P10.

A perusal of Ex.P1 revealed that the respondent, on receipt of secret information recorded the same in the general diary of the respondent's Police Station. Thereafter, it was informed to the Deputy Superintendent of Police and

obtained permission to proceed with further course of action. Thereafter, they went to the scene of crime at about 09.00 hrs on 01.02.2019 and found the

accused. Immediately, he was served with a search notice. On search, the respondent found that the appellant was in possession of the alleged contraband.

As per the seizure Mahazer viz., Ex.P3, the respondent seized the contraband on 01.02.2019 at about 15.00 hrs viz., 03.00 p.m. Even before the seizure mahazer,

the appellant was served with the arrest intimation on 01.02.2019 at about 10.30 a.m. Thereafter, he was issued with arrest card and it contains crime number as

Crime No.11 of 2019 registered for the offences punishable under Sections 8(c) r/w 21(b), 8(c) r/w 21(c), 8(c) r/w 20(b)(ii)(B), 8(c) r/w 25 and 8(c) r/w 28 of

the NDPS Act. Further, he was also intimated by the arrest intimation, which was marked as Ex.P6 and it also contains the crime number as Crime No.11 of

2019. Therefore, the entire case of the prosecution is a cooked up one and as



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such, the entire case of the prosecution is an unbelievable one.

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9. As rightly pointed out by the learned counsel for the appellant, in FIR, Column No.3(c) specifically contains general diary reference entry numbers. However, the respondent recorded the secret information in the general diary and as per Ex.P1, no general diary reference was made in the FIR registered in Crime No.11 of 2019. That apart, even before bringing the appellant to the police station, the arrest intimation and arrest card contains crime number, viz., even before registration of FIR. FIR got registered on 01.02.2019 at about 2 p.m. Even according to the respondent, the distance between the scene of crime and the Police Station is 25 kms. Therefore, the entire prosecution case is an unbelievable one.

10. In this regard the learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Kaaljit Singh @ Pappu Vs. State of Punjab*** reported in ***(2020) 14 SCC 9*** wherein it is held as under:

“ 6. This Court, in the recent decision in the case of Mohan Lal Vs. The State of Punjab– AIR 2018 SC 3853, has frowned upon the same police official being the informant and the investigating officer. The court has observed thus:



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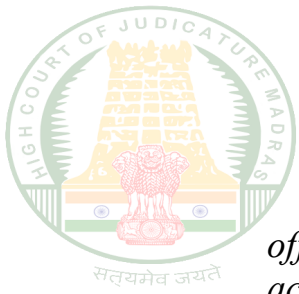


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“25. In view of the conflicting opinions expressed by different two Judges Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

7. Indeed, Manjit Singh (PW 2) had received information telephonically and had passed on the same to his contemporary who recorded the FIR but the fact remains that he himself investigated the case. The unfairness in investigation becomes more glaring when we peruse the search and seizure panchanamas. It is seen that the FIR number has been noted at the top of these panchanamas. It is unfathomable as to how the FIR number could be noted on the search and seizure panchanamas when the same were drawn up obviously at an earlier point in time and preceded the registration of the FIR. Even this discrepancy has not been explained by the prosecution at all. Furthermore, we find that the FIR has been registered by Nirmaljit Singh but he has not been examined by the prosecution and no explanation is offered in this regard as well.

8. All these deficiencies, in our opinion, create serious doubts and are fatal to the prosecution case, for which reason the appellant deserves to be acquitted of the stated



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offence by giving him the benefit of doubt. We order accordingly. The bail bond stands discharged. The appeal is allowed."

11. Therefore, the prosecution had miserably failed to prove any charge and the conviction and sentence imposed on the appellant cannot be sustained and is liable to be set aside.

12. Accordingly, the Judgment passed in C.C.No.59 of 2020 dated 28.04.2023 passed by the I Additional Special Judge, Special Court under EC and NDPS Act, Chennai 104, is hereby set aside. The appellant is acquitted from all charges in C.C.No.59 of 2020 for the offences under Sections 8(c) read with 21(c) and Sections 8(c) read with 20(b)(ii)(B) of the NDPS Act. The appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.

13. In the result, this Criminal Appeal is allowed.

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Speaking order/Non-speaking order
Index : Yes/No



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Internet : Yes/No
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G.K.ILANTHIRAIYAN, J.

mn

To

1. The I Additional Special Judge,
Special Court under EC and NDPS Act,
Chennai 104.
2. The Inspector of Police,
NIBCID, Chennai.
3. The Central Prison,
Puzhal.
4. The Public Prosecutor,
High Court, Madras.

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