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CrI.A.No.1396 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

CORAM:

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

CrI.A.No.1396 of 2024
and CrI.M.P.No.13010 of 2025

Sathish @ Manga Sathish

... Appellant

Vs.

The State rep. by
The Inspector of Police,
H5, New Washermenpet Police Station.

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and set aside the order and judgment in C.C.No.100 of 2022 passed by the learned Principal Special Judge, EC & NDPS Court, Chennai, acquit the appellant of the said charge.

For Appellant : Mr.D.Padmanabhan

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



Crl.A.No.1396 of 2024

JUDGMENT

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This Criminal Appeal has been filed as against the judgment dated 23.07.2024, passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, made in C.C.No.100 of 2022, thereby convicting the appellant for the offences punishable under Sections 8(c) r/w. 22(C) & 8(c) r/w. 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”).

2. The case of the prosecution is that, on 30.09.2021 at about 7.45 a.m., the respondent received an information through phone that in the scene of crime, the appellant would come to sell psychotropic tablets and ganja. On receipt of the said information, the respondent obtained permission and reached the scene of crime along with a team. They found three persons and except the appellant two others had escaped from the scene of crime. On enquiry, the appellant gave consent for the search by the police officials and on the search, the respondent found that the appellant was in possession of 1260 numbers of Nitrovet-10 mg., tablets weighing 705 grams and also 2 kg of ganja. After taking samples, the confession of the appellant was also recorded. Thereafter, they prepared



Crl.A.No.1396 of 2024

arrest report and produced before the Investigation Officer. The Investigation Officer registered the FIR in Crime No.2126 of 2021 for the offences punishable under Sections 8(c), 20(b)(ii)(B) and 22(C) of the NDPS Act. After completion of investigation, the respondent filed final report and same was taken cognizance in C.C.No.100 of 2022.

3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.5 and marked documents in Ex.P.1 to Ex.P.10. The prosecution also produced material objects in M.O.1 to M.O.5. On the side of the appellant, no one was examined and no documents were marked before the trial Court. On perusal of the oral and documentary evidences, the trial Court found the appellant guilty for the offences under Sections 8(c) r/w. 22(C) & 8(c) r/w. 20(b)(ii)(B) of the NDPS Act and sentenced him as follows :-

S.No.	Conviction	Sentence
1	8(c) r/w. 22(C) of the NDPS Act	to undergo rigorous imprisonment for a period of twelve years and to pay fine of Rs.1,20,000/-, in default to undergo rigorous imprisonment for further period of six months.
2	8(c) r/w. 20(b)(ii)(B) of the NDPS Act	to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.50,000/-, in default to undergo rigorous imprisonment for further period of six months.

The above sentences were ordered to run concurrently. Aggrieved by the

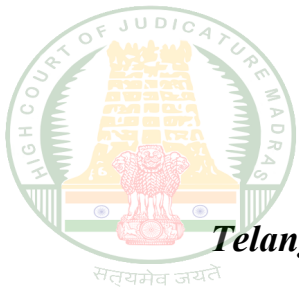


Crl.A.No.1396 of 2024

same, the appellant filed the present appeal.

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4. The learned counsel appearing for the appellant submitted that the arrest memo was issued to the appellant at the time of his arrest i.e., at 9.00 a.m., on 30.09.2021 and it contains the crime number as No.2126 of 2021. Even according to the case of the prosecution after his arrest, the confession statement of the appellant was recorded and thereafter he was brought to the police station at about 11.00 a.m. Only thereafter, the FIR has been registered in Crime No.2126 of 2021. He further submitted that the laboratory report was marked as Ex.P.8 through expert. It was sent for analysis after the period of four months. Therefore, the prosecution failed to comply with the mandatory provisions as contemplated under Section 52A of the NDPS Act. The prosecution failed to certify the correctness of inventory, photographs and samples which were allegedly seized from the appellant. Therefore, it is clear violation of Section 52A of the NDPS Act. The entire case of the prosecution is not legitimate and the prosecution has failed to prove the charges as against the appellant. In support of his contention, he relied upon the judgment dated 01.03.2024 in Crl.A.No.1610 of 2023 reported **2024 INSC 158** in the case of *Mohammed Khalid and anr Vs. State of*



Telangana.



Crl.A.No.1396 of 2024

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5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that after complying all the mandatory provisions, the appellant was arrested and remanded to judicial custody. The contraband was subjected for analysis and the laboratory report was also marked before the trial Court as Ex.P.8. The appellant was served with search notice and the same was marked as Ex.P.2. Under the seizure mahazar, the contrabands were seized from the appellant, which was marked as Ex.P.3. Thereafter, the respondent prepared the report as contemplated under Section 57 of the NDPS Act and the same was marked as Ex.P.4. Further, the appellant was served with report and thereafter he was arrested and remanded to judicial custody. Therefore, the prosecution proved all the charges and it doesn't warrant any interference from this Court.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



Crl.A.No.1396 of 2024

WEB COPY

7. On perusal of the records, it is revealed that P.W.1 received information on 30.09.2021, at about 7.45 a.m., that the appellant would come to sell psychotropic tablets and ganja. It was informed to the superior officers and permission was obtained to go to the scene of crime and take necessary action. In the scene of crime, the respondent and the team found the appellant and two others. Immediately on seeing the respondent police, they had flown away from the scene of crime and the appellant alone had gotten caught and consented for search by the police personnel, on receipt of search notice.

8. On search, the respondent found that the appellant was in possession of Nitravet-10 mg tablets, 84 strips each containing 15 tablets totally 1260 numbers weighing 705 milligrams. That apart, the appellant was also found in possession of 2 Kg of ganja. After taking samples weighing 50 grams each from the total contraband, the remaining contraband were packed and sealed it. The appellant was informed about his arrest by serving him an arrest memo at about 9.00 am. Thereafter, the appellant was brought to the respondent police stations and the FIR in Crime No.2126 of 2021 was registered for the offences punishable under



Crl.A.No.1396 of 2024

Section 8(C), 20(b)(ii)(B) & 20(c) of the NDPS Act, at about 11 am., on 30.09.2021.

9. On perusal of the Ex.P.6 viz., the arrest memo, it contains the crime number. According to the prosecution, it was served on the appellant at the time of arrest i.e., at 9.00 a.m. However, the FIR got registered at about 11 am. Further, the arrest report which was marked as Ex.P.5, also contained the crime number. Therefore, the case of the prosecution is not legitimate. Further the alleged 84 strips of Nitrovet-10 tablets each contained 15 tablets, which total to 1260 numbers, each weighing 0.56 mg which comes to a total of 0.705 grams, which is even lesser than the small quantity of Nitrozepam, which is 20 grams and is way lesser than commercial quantity of nitrozepam which is 500 grams. Therefore, it is not a commercial quantity and the prosecution projected it as commercial quantity and accordingly wrongfully charged the appellant.

10. Further the learned counsel appearing for the appellant specifically contended that the prosecution failed to comply with Section 52A of the NDPS Act. On perusal of the records, it is revealed that the



Crl.A.No.1396 of 2024

WEB COPY

prosecution ought to have obtained certification of correctness of inventory so prepared in the presence of Magistrate and such certificate produced as Annexure 2. In the case of hand, the official who collected the sample from the police station to carry the same to the Forensic Laboratory was not examined by the appellant. Further the inventory of the contraband was not taken and the prosecution failed to produce the inventory register or certificate to certify the inventory of the contraband. Therefore, the prosecution failed to follow the mandatory provisions as contemplated under Section 52A of the NDPS Act.

11. In this regard, it is relevant to relay upon the judgment dated 01.03.2024 in Crl.A.No.1610 of 2023 reported **2024 INSC 158** in the case of **Mohammed Khalid and anr Vs. State of Telangana** in which, the Hon'ble Supreme Court of India held as follows :-

“22. Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer P.W.5 for preparing an inventory and obtaining samples in presence of the judisdictional Magistrate. In this view of the matter, the FSL report (Exhibit P.11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot. The offence under Section 20(b)(ii)(c) deals with production, manufacture, possession,



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Crl.A.No.1396 of 2024

sale, purchase, transport, import or export of cannabis. It is not the case of the prosecution that the accused A-3 and A-4 were found in possession of ganja. The highest case of the prosecution which too is not substantiated by any admissible or tangible evidence is that these two accused had conspired sale/purchase of ganja with A-1 and A-2. The entire case of the prosecution as against these two accused is based on the interrogation notes of A-1 and A-2.”

Thus it is clear that, the entire case of the prosecution is unbelievable one and the prosecution failed to prove the charges beyond any doubt.

12. 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 are liable to be set aside.

13. In view of the above discussions, the conviction and



Crl.A.No.1396 of 2024

sentence imposed on the appellant by the judgment dated 23.07.2024 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, made in Special C.C.No.100 of 2022, for the offence under Sections 8(c) r/w. 22(C) & 8(c) r/w. 20(b)(ii)(B) of the NDPS Act, are hereby set aside. The appellant/first accused is acquitted of all charges in C.C.No.100 of 2022, on the file of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

14. Accordingly, the Criminal Appeal stands allowed. Consequently, connected miscellaneous petition is closed.

07.07.2025
(2/2)

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Crl.A.No.1396 of 2024

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- To
- 1.The Principal Special Judge,
Special Court for EC & NDPS Act,
Chennai,
 - 2.The Inspector of Police,
H5, New Washermenpet Police Station.
 - 3.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.1396 of 2024

G.K.ILANTHIRAIYAN, J.

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Crl.A.No.1396 of 2024
and Crl.M.P.No.13010 of 2025

07.07.2025
(2/2)