



Crl.A.No.1412 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM :

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

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and

Crl.M.P.No.16085 of 2024

Raju

... Appellant

Vs

State rep by
The Inspector of Police,
PEW Washermenpet Unit,
Chennai.
(Crime No.45 of 2023)

... Respondent

Prayer: Criminal Appeal filed under Section 415(2) of BNSS, pleaded to set aside the judgment passed in C.C.No.668 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai, dated 21.09.2024 by allowing this Appeal.

For Appellant : Mr.S.K.Mageshwaran

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

JUDGMENT



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This Criminal Appeal has been preferred as against the judgment

dated 21.09.2024 passed in C.C.No.668 of 2023 on the file of the learned Principal Special Court under EC & NDPS Act, Chennai, thereby convicted the appellant for the offence punishable under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.

2. The case of the prosecution is that on 10.02.2023 at about 11.45 hours, the respondent received an information from the informant that, near Tondiarpet Railway Station, one person who was wearing white colour full hand shirt with black flowers printed and sandal colour cotton jeans pants would wait for illicit transportation of Hashish Oil. After recording the information and obtaining permission from the superior officer, they proceeded to the spot along with his police party and after identifying the appellant/accused, they enquired him. The appellant revealed that he is hailing from Andhra Pradesh and he does not know Tamil. Therefore, one driver Hari explained the appellant about the search and also informed him about the right as contemplated u/s 50 NDPS Act. Thereafter, the respondent made a search and found that the appellant was in possession of 2 Kgs. of Hashish Oil. After taking samples, the remaining contraband was seized from the appellant at about



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1 p.m. After completion of formalities, the appellant was brought to the station with report as contemplated u/s 57 of NDPS Act. Thereafter, a FIR was registered against the appellant in Crime No.45 of 2023 for the offence punishable u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act. After completion of investigation, a final report was filed before the Principal Special Court under EC & NDPS Act, Chennai and same was taken cognizance in C.C.No.668 of 2023 for the offence u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

3. Before the Trial Court, the prosecution examined five (5) witnesses as P.W.1 to P.W.5 and marked eleven (11) documents as Ex.P1 to Ex.P11 and also produced three (3) Material Objects as M.O.1 to M.O.3. On the side of the accused, no witness was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty and convicted him for the offence u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act and sentenced him to undergo 12 years Rigorous Imprisonment and to pay fine of Rs.1,20,000/-, in default of payment of fine, to undergo a further period of six (6) months of



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Rigorous Imprisonment. Aggrieved by the same, the present Criminal Appeal has been filed.

5. The learned counsel for the appellant would submit that one Hari, who was engaged for translation from Telugu to Tamil was showed Hari as driver, but he is a home guard and stock witness of the prosecution. However, the prosecution failed to examine that person. Hence, the prosecution failed to comply with the provision u/s 52A of the NDPS Act. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court reported in **2023 INSC 634** in the case of ***Mangilal Vs. State of Madhya Pradesh***. Further, he submitted that the seizure mahazar contains crime number. According to the prosecution, the alleged contraband was seized from the appellant at about 01.00 p.m., and thereafter, the report u/s 54 of the NDPS Act was prepared and the appellant was brought to the police station. At about 15.15 hours, the FIR got registered in Crime No.45 of 2023 for the offence u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act. A perusal of the seizure mahazar revealed that it contains the crime number and it was prepared at about 01.00 p.m. on 10.02.2023. Further, the arrest memo served to the appellant also contains crime number and it was prepared at about 1.50 hours.

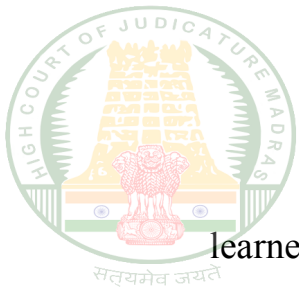


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Therefore, the very registration of FIR and seizure of alleged contraband cannot be considered as a legitimate one and the prosecution has failed to prove the case beyond any doubt. Hence, the judgment of conviction and sentence passed by the Trial Court is erroneous and the same is liable to be set aside.

6. Per contra, learned Additional Public Prosecutor submitted that on receipt of the secret information, the respondent formed a team and went to the scene of crime, where, the appellant was found in possession of 2 Kgs. of Hashish Oil. After completion of formality, he was arrested and remanded to judicial custody. The person who submitted the report u/s 57 of the NDPS Act was examined as P.W.1, the Mahazar confession witness was examined as P.W.2, the expert was examined as P.W.3 and the Investigating Officers were examined as P.W.4 and P.W.5. All the witnesses supported the case of the prosecution and the Trial Court rightly convicted the appellant. Hence, the judgment passed by the Trial Court does not warrant any interference by this Court. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the



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learned Additional Public Prosecutor appearing for the respondent police and also perused the materials available on record.

8. The specific case of the prosecution was that on receipt of the secret information on 10.02.2023 at about 11.45 a.m., the respondent obtained permission from the superior officer and went to the scene of crime. Thereafter, the appellant was served with search notice and the same was marked as Ex.P.1. Before the search, the respondent found that the appellant is hailing from Andhra Pradesh and he does not know Tamil. Therefore, one Hari was engaged for translation as contemplated u/s 52A of the NDPS Act. The appellant was duly informed about the right as contemplated u/s 50 of the NDPS Act. Thereafter, the appellant was served with search memo and the appellant consented for the search to be conducted by P.W.1 and his party. In the search, the appellant was found in possession of 2 Kgs. of Hashish Oil. After lifting two samples, weighing 50 grams each for chemical analysis, the remaining contraband was seized under Ex.P.3, which was prepared at about 1.00 p.m. Thereafter, the appellant was issued with arrest intimation, which was marked as Ex.P.4. After completion of seizure, voluntary confession of the appellant was recorded in the scene of crime itself, and thereafter the



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respondent prepared the special report as contemplated u/s 57 of the

NDPS Act. Thereafter, the appellant was brought to the station and an

FIR was registered in Crime No.45 of 2023 at about 15.15 hours. On a

perusal of Ex.P.3 and Ex.P.4, it revealed that both the documents contain

the crime number as 45 of 2023. According to the prosecution, after

bringing the appellant to the police station, FIR got registered. However,

both the seizure mahazar and the arrest intimation contains crime number.

Therefore, the very seizure mahazar as well as the arrest intimation are

doubtful and the prosecution failed to prove the same. In this regard, it is

relevant to rely upon the judgment of the Hon'ble Supreme Court in the

case of ***Kaaljit Singh @ Pappu Vs. State of Punjab*** reported in (2020) 14

SCC 9, wherein the Hon'ble Supreme Court has 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:*

*“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*



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

9. The above case is squarely applicable to the case on hand. It is seen from the Ex.P.3 and Ex.P.4 that Crime No.45 of 2023 is contained in all those documents. It clearly shows that the arrest intimation was already prepared and served on the appellant at the place of scene of



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crime. The prosecution failed to explain the discrepancy, and it is apparent on the face of the record in the prosecution's case. Therefore, the prosecution failed to prove the case beyond the doubt and the benefit of doubt goes in favour of the appellant.

10. That apart, one Hari was engaged as a translator between P.W.1 and the appellant as the appellant does not know Tamil and he is hailing from Andhra Pradesh. The said Hari explained about the search to be conducted on the appellant. He was then found to be a home guard and he is not a driver, however the prosecution wrongly exposed him as a driver. Further, the prosecution failed to examine the said Hari in order to comply with the provisions u/s 52A of the NDPS Act. Therefore, it is a clear violation of the provisions u/s 52A of the NDPS Act. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court reported in **2023 INSC 634** in the case of **Mangilal Vs. The State of Madhya Pradesh**, wherein the Hon'ble Supreme Court has held as follows :-

*“9. On the issue of seizure in the presence of Magistrate, we wish to place reliance upon the decision of this Court in **Union of India v. Mohanlal, (2016) 3 SCC 379**:*



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“16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of



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seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

Therefore, it is clear that the prosecution has failed to comply with the provisions u/s 52A of the NDPS Act. Hence, this Court feels that the above conviction and sentence imposed on the appellant cannot be sustained and the same is liable to be quashed.

11. Accordingly, this Criminal Appeal is allowed and the judgment dated 21.09.2024 passed by the Principal Special Court under EC and NDPS Act, Chennai in C.C.No.668 of 2023 is hereby set aside. The appellant is acquitted of all charges u/s 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Fine amount, if any paid by the accused shall be refunded to him forthwith. Bail bond, if any, executed by the accused shall stands cancelled.

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Neutral citation : Yes/No
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Chennai.

2.The Inspector of Police,
PEW Washermenpet Unit,
Chennai.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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