

Crl.A.(MD).No.12 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.12.2024
Pronounced On	:	15 .05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.12 of 2021
and
Crl.MP(MD)No.194 of 2021

1.Paraman
2.M.Pandian
3.Shaik Alauddin

... Appellants/Accused No.1 to 3

Vs.

The State rep by,
The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub-Zone,
Madurai.
NCB F.No.48/1/03/2017/NCB/MDU

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to set aside the conviction and sentence passed in C.C.No.389 of 2017 (NCB F.No.48/1/03/2017/NCB/MDU) by judgment dated 22.10.2020 on the file of the Principal Special Court for EC & NDPS Act Cases, Madurai.



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For Appellant : Mr.B.Pandiarajan for A1
Mr.G.Murugendran for A2
Mr.M.Jegadeesh Pandian for A3

For Respondent : Mr.C.Arulvadivel @ Sekar
Special Public Prosecutor for NCB Cases

JUDGMENT

The appellants/A1 to A3 in C.C.No.389 of 2017 on the file of the Principal Special Court for EC & NDPS Act Cases, Madurai, have filed this appeal, challenging the conviction and sentence imposed against them on 22.10.2020, wherein, they were convicted for the offence under Section 8(c) r/w 20(b)(ii)(C), 28 and 29 of the NDPS Act for the illegal possession and transportation of 150 kg of ganja.

2.The brief facts of the case as follows:

2.1. 22.06.2014, at 05.00 p.m, P.W.1, Intelligence Officer, NCB, Madurai, received a secret information from the informer about the illegal transportation of huge quantity of ganja from Andhra Pradesh to Tamil Nadu in a Car bearing Reg.No.TN-39-BQ-0429 and the accused would take rest at

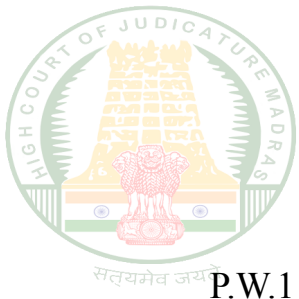


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Maharaja Hotel situated opposite to the Mattuthavani Bus Stand, Madurai.

He received the said information and recorded it and informed the same to his Immediate Superior, P.W.2 through telephone and got permission. Thereafter, P.W.1 and officers along with P.W.3, independent witness went to the spot with necessary equipment and mounted surveillance and at about 05.15 p.m, the said car arrived at that place. P.W.1 and his team intercepted the said car and introduced themselves as officers of NCB and informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct the search by the officer himself and hence, P.W.1 made search in the car and found 150 kg of ganja in 71 pockets. They recovered the same after following the procedure and kept the same in three nylon gunny bags and took samples of (each 25 grams) P1, P2 and P3 from each nylon gunny bag and properly sealed the same and also sealed the remaining contraband. Thereafter, they conducted personal search on the appellants after satisfying the requirement under Section 50 of the Act and recovered a cell phone sim card and cash. Thereafter, they summoned the accused under Section 67 of the NDPS Act. They agreed to come along with



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P.W.1 and they were taken by NCB officers to their office on 22.06.2017 at 10.00 p.m. Thereafter, they gave statement under Section 67 of the NDPS Act. After that, all the appellants were arrested and the same was duly intimated to their relatives. P.W.1 handed over the accused along with contraband and a detailed report under Section 57 of NDPS Act to P.W.2. P.W.2 remanded the accused along with contraband and a case was registered against the appellants in NCB F.No.48/1/03/2017/NCB/MDU for the offence under Section 8(c) r/w 20(b)(ii)(C), 25, 27(A), 28 & 29 of NDPS Act. After completing all the formalities, the learned Judicial Magistrate remanded the appellants. Thereafter, P.W.4 conducted the investigation and filed the complaint before the Principal Special Court for EC & NDPS Act Cases, Madurai, and the same was taken on file in C.C.No. 389 of 2017.

2.2. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood for trial.



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2.3. The prosecution, to prove the case examined P.W.1 to P.W.5

and exhibited 47 documents as Ex.P.1 to Ex.P.47 and produced 26 material objects as M.O.1 to M.O.26. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and specifically stated that when they were proceeding towards Madurai, there was mechanical defect in the car and the car driver, A3 was directed to come to Madurai, and after repairing the car A1 and A2 reached Maharaja Hotel, Madurai. After repairing the car, when A3 was proceeding towards Madurai, some third person travelled in the car and the third person put the ganja pockets without knowledge of A3 and thereafter, they got dropped at Mattuthavani Bus Stand and they have no knowledge about the contraband in the car. Thereafter, the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness and no document was marked.



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2.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(c), 28 and 29 of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment (3 counts) each and to pay a fine of Rs.1,00,000/- (Rupees One Lake only) (3 counts) each in default, to undergo, 6 months Imprisonment (3 counts) each for the offence under Section 8(c) r/w 20(b)(ii)(C), 28 and 29 of the NDPS Act.

3. Challenging the same, present appeal has been filed.

4. Even though one appeal was filed, the appellants appeared through three different counsel. **Thiru.B.Pandiarajan**, learned counsel appeared on behalf of the first appellant/A1, **Thiru.G.Murugendran**, the learned counsel appeared on behalf of the second appellant/A2, and **Thiru.M.Jegadeesh Pandian**, learned counsel appeared on behalf of the third appellant/A3 and jointly made the following submissions:-

4.1. Without conviction under Section 25 of the NDPS Act, the conviction and sentence under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of



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the Act with the allegation that they were found in possession of huge quantity of ganja in the car is not legally maintainable.

4.2. According to the prosecution, the second appellant/A2 was the owner of the Car. To prove the same, no evidence was adduced.

4.3. The learned trial Judge acquitted the appellants under Sections 25 and 27(A) of the Act, and convicted them for the offence under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of the Act which is not legally maintainable. More interestingly, the learned trial Judge convicted the appellants for the offence under Section 29 of the Act also. But, there was no evidence adduced to prove the conspiracy between the appellants to convict the accused under Section 29 of the Act.

4.4. The conviction under Section 28 of the Act is not made out when there is specific finding and conviction and sentence under Section 8(c) r/w 20(b)(ii)(C) of the Act. Therefore, he seeks to set aside the impugned judgment on legal aspects.



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4.5. The complaint given by P.W.4 is not maintainable. He is not an intelligence officer. The learned counsel produced the notification of the Government dated 27.09.1989. On the basis of the notification, he stated that only officer '*of and above the rank of inspector*' should have filed complaint. Therefore, he seeks to set aside the conviction and sentence passed by the learned trial Judge.

4.6. As per *Tofan singh Vs. State of Tamil Nadu reported in 2021 14 SCC 1*, statement recorded by P.W.1 under Section 67 of the Act is inadmissible. The learned trial Judge committed error in convicting the appellants on the basis of the statement under Section 67 of the Act.

4.7. According to the prosecution, Ex.P.2, mahazar was prepared in English and the same was read over to the appellants in their known language, but no evidence was adduced to show that the same was read over to that accused. More particularly, one of the accused is uneducated and illiterate and he put his thumb impression.



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4.8. The prosecution miserably failed to prove the compliance under Section 42 of the Act. Ex.P.1 is not a original document. It is only a Xerox copy. Therefore, it is the suspicious document. Hence, strict compliance of Section 42 of the Act, is not correct.

4.9. There was no compliance under Section 52 A of the NDPS Act.

4.10. The learned trial Judge committed error in holding that Section 42 of the Act was not applicable to the present case on the ground that the recovery was made in the public place and the same was against the law laid down by the Hon'ble Supreme Court in the case of ***Boota Singh and Others Vs. State of Haryand reported in (2021) 19 SCC 606.***

4.11. The evidence of P.W.3 is unbelievable evidence and his presence in the occurrence place itself is doubtful.



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4.12. The prosecution failed to prove the conscious possession of the contraband in the car. In the questioning under Section 313 Cr.P.C., they specifically explained that some unidentified person travelled in the car and they would have kept the contraband in the car without knowledge of A3. Therefore, the conscious possession was not established.

4.13. The explanation given by the accused during 313 Cr.P.C., questioning is plausible and the same was not considered by the learned trial Judge in proper manner. In all aspects, the prosecution miserably failed to prove the case and hence, he seeks acquittal.

4.14. To support their contentions, they have relied the following precedents:-

- i) Mohinder Singh Vs. State of Punjab reported in (201) 11 SCC 570*
- ii) Mohd.Aslam Khan Vs. Narcotics Control Bureau and Another reported in (1996) 9 SCC 462*
- iii) Oom Prakash Alias Baba Vs. State of Rajasthan reported in (2009) 10 SCC 632*
- iv) State Through Narcotics Control Bureau*



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Vs. Kulwant Singh and batch reported in (2003) 9 SCC 193

v) N.Uganchand Kumawat Vs. The Insepctor of Police, NIB-CID, Dindigul in Crl.A(MD)No.551 of 2021

vi) Mohammed Khalid and Another Vs. The State of Telangana in Crl.A(MD)No.1610 of 2023

v) Lakshmi Vs. The state in Crl.A(MD)No. 143 of 2020 (24.10.1997)

5. Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor for State made the following submissions:-

5.1. The recovery was made from the car in the public place. Therefore, the learned trial Judge correctly held that Section 43 of the Act alone is applicable. The notification relied by the learned counsel for the appellants itself, states that '*of and the above rank of the Inspector*'. Therefore, P.W.4 is a competent officer and therefore, the said contention of the learned counsel for the appellants that the complaint was made by the incompetent person is not legally correct. The judgment of the Hon'ble Supreme Court in Tofan singh was delivered on 29.10.2020. There was no

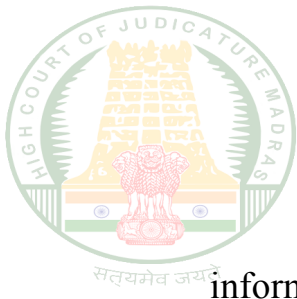


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reference about the applicability of retrospective operation. Therefore, the said principle is not applicable to the already decided cases. Hence, the statement recorded under Section 67 of the Act is admissible.

5.2. The learned Special Public Prosecutor read through the entire judgment of the Tofan Singh. His case is that the statement recorded under Section 67 of the Act by the officer is admissible. The independent witness P.W.3 was examined and he was also subjected to incisive cross-examination, and nothing was elicited to disbelieve his evidence. P.W.1 also clearly deposed about the recovery. Once possession of the contraband from the vehicle and the presence of the appellants in the said car was clearly proved, the conviction and sentence under Section 8(c) r/w 20(b)(ii)(C) of the Act is clearly made out. P.W.1 received the information and he reduced it in writing and submitted the same immediately to P.W.2. P.W.2 also clearly deposed about the receipt of information. In the said circumstances, the submission of the learned counsel for the appellants that non-production of the notes taken for the recording of the information is immaterial. Law insists to inform to the higher officer in writing and the same was to be



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informed within 72 hours. Therefore, Section 42 of the Act was clearly complied with and there is no infirmity in the judgment of the learned trial Judge.

5.3. There is no bar to convict the appellants under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of the Act after acquitting the appellants from the offence under Sections 25 and 27(A) of the Act. Each Section is an independent offence. Once the conscious possession was established by the prosecution, the presumption under Sections 54 and 35 of the Act comes into operation. Conscious possession was clearly proved through P.W.1 and P.W.3 and entire contraband was seized and properly produced before the Court below and the proper godown receipt also was marked. Hence, the prosecution clearly proved the ingredients of the offence under Sections 8(c) r/w 20(b)(ii)(C), 28 & 29 of the Act to convict the appellants.

5.4. The company of the three accused with huge quantity of contraband itself is a strong circumstance to prove the conspiracy.



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5.5. Apart from that, statement under Section 67 of the Act contains the mode of conspiracy to bring the contraband from Andra Pradesh. Therefore, in all aspects, the prosecution clearly proved the case and the learned trial Judge correctly convicted the appellants for the offence under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of the NSDPS Act.

5.6. This Court considered the rival submissions and perused the records available on record and also the precedents relied upon by them.

6. The question arising for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellants and the conviction and sentence imposed by the learned trial Judge against the appellants can be sustained or not?*

7. Discussion on the competent officer:-

7.1. According to the learned counsel for the appellants, as per notification dated 27.09.1989. P.W.4 is not a competent officer. According to the counsel, only above the rank of the Inspector, should have filed the



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compliant. To appreciate the said contention, this Court has extracted the notification which reads as follows:-

MINISTRY OF FINANCE

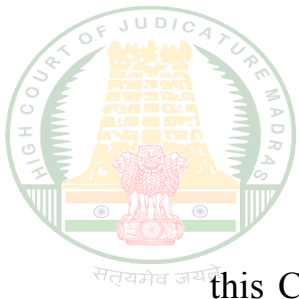
(Department of Revenue)

ORDER

New Delhi, the 27th September 1989

*S.O.763(E):-In exercise of the powers conferred by clause (d) of sub-Section (i) of section 86A of the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985), the Central Government hereby authorizes the officers **of and above the rank of Inspector** in the Department of Customs, Central Excise, Narcotics, Revenue Intelligence, Central Economic Intelligence Bureau and the Narcotics Control Bureau under the Ministry of Finance, Government of India for filing of complaints relating to an offence under the said Act before Special Courts.*

7.2.1. In the above said notification, it is clear that '*of and above the rank of Inspector*'. Therefore, the submission of the learned counsel for the appellants that only the officer above the rank of Inspector has to file complaint is misconceived. When the similar argument was made before



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this Court in Crl.A(MD)No.551 of 2021, it was rejected by this Court, on 29.09.2023. Therefore, the submission of the learned counsel for the appellants that the complaint was not made by the competent person is not accepted.

7.2.2. P.W.4 is the competent person and correctly laid the compliant under Section 36 (A) of the Act for the offence under Section 8(c) r/w 20(b)(ii)(C), 27(A), 28 & 29 of NDPS Act and the same was correctly appreciated by the learned trial Judge in C.C.No.389 of 2017. Therefore, there is no merit in the contention of the learned counsel for the appellants that the complaint is not maintainable.

8. Proof of Recovery:-

8.1. According to the prosecution, P.W.2 & his team and P.W.3 intercepted the vehicle. P.W.1 clearly deposed about the recovery of huge quantity of the contraband in 71 pockets. P.W.3, the independent witness also deposed about the recovery of the said contraband. Even in the cross-examination, he reiterated the statement that the accused persons were



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occupants in the car and the contraband was recovered from the car. This Court finds no material discrepancies between the evidence of P.W.1 and P.W.3. All the contemporaneous documents were duly prepared and the entire contraband was produced before the Court at the time of remand itself. Thereafter, it was properly kept in the godown. To prove the same, godown receipt was also marked.

8.2. The accused gave an explanation that some third party planted the contraband in the said car which is unacceptable. From the statement recorded under Section 313 Cr.P.C., the presence of accused in the scene of occurrence and the recovery of contraband is clearly proved.

9. Discussion on Section 42 of the Act:-

9.1. Section 41(2) of the Act empowers the searching officer, who has received the information to search and arrest for the illegal possession, concealment, transportation as mentioned in the NDPS Act relating to the narcotic drugs or psychotropic substance or controlled substance.



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9.2. Section 42 of the Act and Section 41 of the Act mandate to follow certain procedure in the case of the arrest and seizure on the basis of the information. The object of the procedure enumerated under Section 42 of the Act either to arrest or search the person and recover the contraband is to safeguard the constitutional right envisaged in the constitution of India for the reason that the same can be made without obtaining the warrant from the Court.

9.3. As per the Section 42 of the Act, if empowered officer has received the secret information about the illegal possession, transportation of narcotic drugs or psychotropic substance or controlled substance and the empowered officer is duty bound to reduce the said information in writing and shall send the same to his immediate superior within 72 hours. The Hon'ble Constitution Bench of the Supreme Court in the case of ***Karnail Singh v. State of Haryana***, reported in (2009) 8 SCC 539 has considered the said requirement and laid the following guidelines:-

“35.In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the



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requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the



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requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information



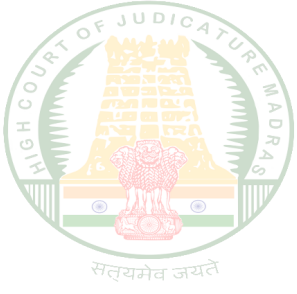
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received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.

9.4. In this case, P.W.1 received the secret information and reduced it in writing under Ex.P.1 and informed the same to his immediate superior P.W.2. P.W.2 came into box and deposed about the receipt of the said information. Ex.P.1 clearly mentioned about the receipt of information by P.W.2. But, the submission of the learned counsel for the appellants that P.W.1 in his evidence deposed that he has not produced the information, which was reduced in writing and he only sent the typed copy of the information to P.W.2. The learned counsel relied the following sentence of P.W.1, which was deposed during cross examination:-



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நான் முதலில் கைப்பட எழுதிய தகவலை என்னுடைய
உயர் அதிகாரிக்கு நான் அனுப்பவில்லை என்றால் சரிதான்.

9.5. It is settled law that the entire evidence of the witness is to be taken into consideration to arrive a finding on a fact, in this case, P.W.1 received the information and reduced the same in writing and thereafter, he typed the information and sent the same to P.W.2. When the evidence of P.W.1 amply proved the compliance under Section 42 of the Act, there is no necessity to produce the other document namely, which he recorded in hand. The requirements of law as per Section 42 of the Act and Karnail Singh case is that he should record the information in writing and submit same to the higher official. Apart from that, Section 42 of the Act clearly stated that it should reach within 72 hours from the time of receipt of information and the same has rightly reached and it was also deposed by P.W.2. In view of the said fact, this Court finds that there is compliance under Section 42 of the Act. Hence, the submission of the learned counsel for the appellants that there is no compliance of Section 42 of the Act is not accepted.



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10. Applicability of Tofan Singh Case :-

10.1. The learned Special Public Prosecutor submitted that Tofan Singh case was delivered on 29.10.2020. There was no specific reference about the applicability of retrospective operation. In the said circumstances, it is well settled law that the precedent is applicable only to the prospective cases on the principle of 'prospective over ruling'. It is well known that the Hon'ble Supreme Court in the year 1967, in the case of Golak Nath Vs. State of Punjab reported in AIR 1967 SC 1643 adopted the doctrine of prospective over ruling as expounded by the Hon'ble U.S., Supreme Court. The said application of the principle of the prospective over ruling adopted by the Hon'ble Supreme Court in “Golak Nath” case also was affirmed by the larger Bench of the Hon'ble Supreme Court in Kesavanatha Bharathi case. The said principle also was reiterated by the Hon'ble Supreme Court in a line of judgments and finally in the Constitution Bench of the Hon'ble Supreme Court in the case of **ECIL v. B. Karunakar**, reported in **1993 (4) SCC 727** has held as follows:

“73. It would, thus, be clear that the Supreme Court of the United States of America has consistently, while overruling previous law or laying a new principle,



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made its operation prospective and given the relief to the party succeeding and in some cases given retrospectively and denied the relief in other cases. As a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose the particular overruling decision seeks to serve. The court would look into the justifiable reliance on the overruled case by the administration; ability to effectuate the new rule adopted in the overruling case without doing injustice; the likelihood of its operation whether substantially burdens the administration of justice or retards the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. The crucial cut-off date for giving prospective operation is the date of the judgment and not the date of the cause of action of a particular litigation giving rise to the principle culminating in the



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overruling decision. There is no distinction between civil and criminal litigation. Equally no distinction could be made between claims involving constitutional right, statutory right or common law right. It also emerges that the new rule would not be applied to ex post facto laws nor acceded to plea of denial of equality. This Court would adopt retroactive or nonretroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

10.2. Following the same, the Hon'ble Supreme Court in the case of ***Sonu v. State of Haryana*** reported in **2017 (8) SCC 570 at page 589** has held as follows:

“40. This Court did not apply the principle of prospective overruling in Anvar case [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 :



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(2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] . The dilemma is whether we should. This Court in K. Madhava Reddy v. State of A.P. [K. Madhava Reddy v. State of A.P., (2014) 6 SCC 537 : (2014) 2 SCC (L&S) 305] held that an earlier judgment would be prospective taking note of the ramifications of its retrospective operation. If the judgment in Anvar [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] is applied retrospectively, it would result in unscrambling past transactions and adversely affecting the administration of justice. As Anvar case [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] was decided by a three-Judge Bench, propriety demands that we refrain from declaring that the judgment would be prospective in operation. We leave it open to be decided in an appropriate case by a three-Judge Bench. In any event, this question is not germane for adjudication of the present dispute in view of the adjudication of the other issues against the accused.”

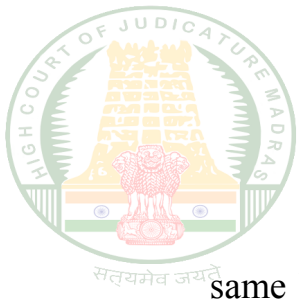
10.3. The same was reiterated by the Hon'ble Supreme Court in various judgments. Hence, this Court agrees with the submission of the



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learned Special Public Prosecutor that the Tofan Singh case is applicable prospectively and therefore, in this case, the statement recorded under Section 67 of the NDPS Act, before the decision of 'Tofan Singh' is admissible to prove the conspiracy, recovery and guilty mind of the accused to transport the huge quantity of the contraband with guilt intention. This Court already made a detailed discussion about the evidence of P.W.1 and P.W.3 relating to the conscious possession of the appellants. The same was corroborated by the statement recorded under Section 67 of the Act by P.W. 1. It is settled law that the entire evidence of the witness is to be taken into consideration to arrive a finding on a fact. In this case, P.W.1 received the information and reduced the same in writing and thereafter, he typed the information and sent the same to P.W.2. When the evidence of P.W.1 amply proved the compliance under Section 42 of the Act, there is no necessity to produce the other document namely, which he recorded in hand. The requirements of law as per Section 42 of the Act and Karnail Singh case is that he should record the information in writing and submit same to the higher official. Apart from that, Section 42 of the Act clearly states that it should reach within 72 hours from the time of receipt of information and the



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same has rightly reached and it was also deposed by P.W.2. In view of the above, this Court finds that there is compliance under Section 42 of the Act. Hence, the submission of the learned counsel for the appellants that there is no compliance of Section 42 of the Act is not accepted.

11. Discussion on the explanation under Section 313 Cr.P.C :-

11.1. The appellants gave the following explanation during the questioning under Section 313 Cr.P.C:-

“During enquiry under Section 313(1)(b) Cr.P.C., all the accused persons filed the statements separately. In their statements, they have specifically stated that on 22.06.2017 both A1 and A2 were coming to Madurai by engaging a car, driven by third accused. Further, they have stated that when they were nearing Vadipatti, the car was stopped due to mechanical defect. Due to this unexpected event both A1, A2 reached Madurai through bus, asking A3 to come over to Madurai after rectifying, the mechanical defect in the car. Thereafter, according to their further defence, when A3 was taking tea in a Bakery on the way to Madurai, some persons had approached him with gunny bags and requested for lift; that A3 also agreed to drop them with luggage on payment of some fair.”



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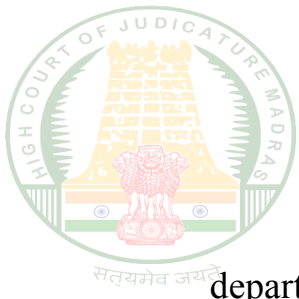
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11.2. The said explanation is stage managed one and no record was produced to show that the car broke down due to mechanical defect and the same was repaired and A3 reached the occurrence place independently. It is unbelievable story when three persons were secured by P.W.1 and P.W.3 simultaneously and they were found in the car with the conscious possession of the contraband. Therefore, answering under Section 313 Cr.P.C., is false and hence, this Court is not inclined to accept the case of the appellants.

12. Therefore, the judgments relied by the learned counsel for the appellants in this aspects is not applicable to the present case.

13. Discussion on non-compliance of Section 52A of the NDPS Act:-

13.1. In this case, P.W.1 seized the huge quantity of 150 kg of ganja. The said huge quantity of ganja was immediately produced before the learned Judicial Magistrate at the time of the remand itself. The learned Judicial Magistrate verified the same and thereafter, returned to the



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department to keep in safe custody. The entire contraband was kept in the godown of NCB. The godown receipt was duly produced before the Court and the same was marked as Ex.P.21. The entire contraband was also marked as MO.16 to MO.18 at the time of the trial. All the marked contraband were properly sealed and found intact. In the above circumstances, the non-compliance of Section 52A of the Act, is not material. The Hon'ble Supreme Court in the case of ***Bharat Aambale Vs. The State of Chhattisgarh*** reported in **2025 INSC 78**, has held as follows:-

“(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

((vI) If the other material on record adduced by the prosecution, oral, or documentary inspires confidence and satisfies the court as regards the recovery as-well as



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conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

*(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR** (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”*

13.2. Further, another judgment of the Hon'ble Supreme Court in ***Narcotics Control Bureau Vs. Kashif*** reported in **2024 NSC 1045**, has held as follows:-



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“24. Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned officer authorised to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act.

13.3. In this regard, this Court already made a detailed discussion in Crl.A(MD)No.551 of 2021 dated 29.09.2023. Hence, this Court is unable to accept the contention of the learned counsel for the appellants to acquit



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the accused on the ground of non-compliance under Section 52(A) of the Act.

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14. Maintainability of Conviction under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of the Act after convicting the appellants from the offence under Sections 25 and 27(A) of the Act:-

Admittedly, NDPS Act is a Special Act. Each offence is an independent offence. Therefore, the learned trial Judge convicted the appellants under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29 of the Act and acquitted the appellants from the offence under Sections 25 and 27(A) of the Act. There is no interdependent ingredients for all the offences. Each Section has different ingredients. In this case, conscious possession of the appellants was found to be proved and hence, Section 8(c) r/w 20(b)(ii)(C), of the Act is clearly made out. Further, there is conspiracy between the accused in carrying the said contraband and hence, Section 29 of the Act also is clearly made out. Apart from the statement under Section 67 of the Act, recorded by P.W.1, and from the circumstances discussed above, it is clear that the accused planned to sell the said huge quantity of the



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contraband and therefore, Section 28 of the Act also is clearly made out.

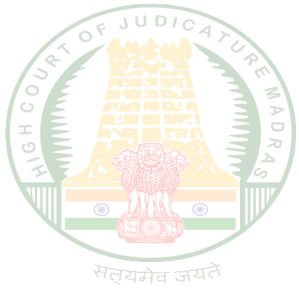
Section 28 of the Act means, *attempt to sell the contraband to various persons*. Therefore, this Court finds no merit in the contention of the learned counsel for the appellants that the conviction under Section 8(c) r/w 20(b) (ii)(C), 28 and 29 of the Act, is not legally maintainable after acquitting the appellants under Sections 25 and 27(A) of the Act.

15. In result, this Court finds that the prosecution clearly proved all the ingredients of the offence beyond reasonable doubt and hence, this Court concurs with the conviction and sentence passed by the learned trial Judge and hence, the appeal is liable to be dismissed.

16. Accordingly, this Criminal Appeal is **dismissed** and the conviction and sentence passed by the Principal Special Court for EC & NDPS Act Cases, Madurai, in C.C.No.389 of 2017 dated 22.10.2020, is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

15.05.2025.

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To:

- 1.The Principal Special Court for EC & NDPS Act Cases, Madurai.
- 2.The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub-Zone, Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

dss

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and
Crl.MP(MD)No.194 of 2021

15.05.2025