



CRL MP(MD) NO. 728 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14-02-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) NO. 728 of 2025

IN CRL A(MD)NO.57 of 2025

Arunkumar
S/o.Chandrabose,
Paraimettu Street, Gandhiji New Street,
Dindigul.

Petitioner(s)

Vs

The State of Tamilnadu
Rep by The Inspector of Police,
Dindigul Town South,
Dindigul.

Respondent(s)

For Petitioner(s):
Mr.R.C.Paul Kanagaraj
Advocate

For Respondent(s):
Mr.T.Senthil Kumar,
Additional Public Prosecutor



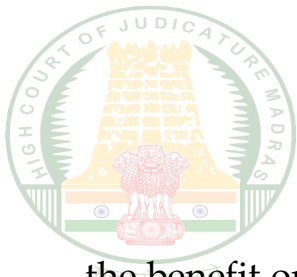
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ORDER

The petitioner is the first accused in C.C.No.20 of 2024 on the file of the I Additional Special Court for NDPS Act cases, Madurai. After the trial, the trial Court, by its Judgment dated 14.11.2024, found the petitioner guilty for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act and convicted and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, with the default sentence of 2 years simple imprisonment. Challenging the Judgment of conviction and sentence, the petitioner has filed an appeal before this Court in Crl.A. (MD)No.57 of 2025 along with the petition for suspension of sentence. The Criminal Appeal was admitted by this Court on 22.01.2025.

2. The learned Senior Counsel appearing for the petitioner submits that though the petitioner was charged for the offence under Sections 25 and 29(1) of the NDPS Act, he was acquitted of the said charges, however, he was found guilty for the offence under Section 8(c) r/w. Section 20(b)(ii)(C) of NDPS Act. The learned Senior Counsel further submits that the mandatory provision as required under Section 42 of NDPS Act has not been complied with. However, the trial Court, without considering the same, has wrongly convicted the petitioner. Therefore, the violation of mandatory provision under Section 42 of NDPS Act is fatal to the prosecution and



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the benefit ought to have been extended to the accused. The learned Senior Counsel further submits that the petitioner is in jail from the date of Judgment, i.e. from 14.11.2024 and he is having arguable points to succeed in this appeal and therefore, pending the appeal, the sentence imposed on the petitioner may be suspended.

3. The learned Additional Public Prosecutor submits that the petitioner was working as a Head Constable and he was suspended for his involvement in a murder case. While he was in suspension, he has also indulged in the offence of smuggling of ganja and he was found in a Car bearing Reg.No.TN57 AM 4462 along with the contraband. Therefore, the respondent Police has recovered 72 kgs. of ganja from the car on 24.07.2023, at about 4 hrs. The Car bearing Reg.No.TN57 AM 4462 belongs to the petitioner, however, it was purchased in the name of his wife. The petitioner's wife is also a Police Constable and she was examined as P.W.5 and she deposed that the Car has been purchased in her name by the petitioner.

4. The learned Additional Public Prosecutor submits that the trial Court has considered the ground taken by the petitioner that there is a violation under Section 42 of NDPS Act and discussed the same elaborately in paragraphs 32, 33, 34 and 35 of the Judgment and thereafter only, found the petitioner guilty for the offence under Section 8(c) r/w. Section 20(b)(ii)(C) of NDPS Act. The learned Additional Public Prosecutor further submits that the petitioner has not rebutted the



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presumption available under Sections 35 and 54 of NDPS Act. Therefore, he raised serious objections for granting suspension of sentence.

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5. This Court considered the rival submissions made and also perused the materials available on record.

6. The point raised by the petitioner is that there is a violation under Section 42 of NDPS Act. The same was discussed by the Trial Court in its Judgment dated 14.11.2024 as under:

“32. Viewed in any angle it can be safely concluded that the provision of Section 42 cannot be said to be applicable to the facts of this case. Both the provision of Section 41(2) and Section 43 are the one that can be said to be applicable to the facts of this case. When the provisions of Section 42 is not applicable, this Court holds that lots of cross examination done to show that the information was not recorded at the place, the information was not proper, the signatures with date and time are not found on it, so on and so forth all becomes irrelevant to the facts of this case. This Court holds that there is no doubt over the mandatory nature of Section 42, provided the requirements contained therein are made out and the applicability of the judgments to such facts. Therefore, the Judgments relied on by the learned counsels for the accused can only be said to be as not applicable to the facts of this case.

33. Another interesting note was raised that Section 43 can be invoked only in cases of chance recovery and not when it is based on



the information. That distinction is not found in the statute. However this contention cannot survive in this case, because the information was taken down in writing by P.W.2. When the search or seizure is to be effected on the basis of the Order of the Court or by the Gazetted officer or his authorised person, then the Provisions of Section 41 would come into play. Even if it is on the basis of the information received from the secret informant, if the search is to be made in public place or by stopping any vehicle while in transit, it would be only the provisions of Section 43 that would be applicable.

34. On this aspect, this Court is inclined to refer to the following Judgments that would throw some light on this aspect.

(a) In the judgement in *Narayanaswamy Ravishankar vs. Assistant Director, Directorate of Revenue Intelligence* reported in (2002) 8 SCC 7, a three judge Bench of the Hon'ble Supreme Court had authoritatively held at Paragraph No.5 of the said judgment as "5. In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant...."

(b) The Constitution Bench of the Hon'ble Supreme Court in *State of Punjab vs. Baldev Singh* reported in (1999) 6 SCC 172, has



held in the following words:- “10. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.”

(c) In SK Raju @ Abdul Haque @ Jagga vs. State of West Bengal rendered in the Criminal Appeal No.459 of 2017 reported in 2018(4) Crimes 147 (SC) it has been held that “In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.” In view of the above facts, this Court holds that the prosecution has prima facie shown the compliance of Section 42, even though it is not required to be complied with.

35. From the above facts and propositions, this court holds that the provisions of Section 42 is not applicable to the facts of this case.



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Therefore, the point raised by the learned counsels for the 1st accused in their written arguments by referring to various Judgments of the Hon'ble High Court and Supreme Court are not applicable to the facts of this case. In spite of the same, both P.W.1, 2 and 4 have vouched for recording the information and sending it to immediate Official Superior. In fact they have also followed the Judgments of the Hon'ble Supreme Court in Karnail Singh's case, which states that when information is received on the move it can be recorded after the officer concerned returns to the Police station. Thus the evidence of P.W.1, 2 and 4 shows that the provisions of Section 42 has been complied with even though it is not applicable to the facts of this case."

7. This Court has also taken note of the objections raised by the Additional Public Prosecutor.

8. The petitioner was working as a Head Constable and he was suspended for his involvement in a murder case. While he was in suspension, he has also indulged in the offence of smuggling of ganja. Further, the contraband has been recovered from the Car bearing Reg.No.TN57 AM 4462, which stands in the name of P.W.5. P.W.5 is none other than the wife of the petitioner and she also deposed that this Car belongs to the petitioner.



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9. Considering the nature of offence and as there are materials against the petitioner, this Court is not inclined to entertain this petition. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
14/02/2025

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/03/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE JUDGE,
I ADDITIONAL SPECIAL COURT FOR NDPS ACT
CASES MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
DINDIGUL TOWN SOUTH,
DINDIGUL.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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ORDER
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IN CRL A(MD)NO.57 of 2025
Date :14/02/2025

MK/SKN/SAR /25.03.2025 9P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023