

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 09.06.2025

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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A.(MD)No.617 of 2025 &
Crl.M.P.(MD)No.6757 of 2025

Jeyarish

... Appellant/A2

vs.

State of Tamil Nadu,
Rep. by The Inspector of Police,
NIB - CID,
Thoothukudi District.
(Crime No.33 of 2018)

...Respondent

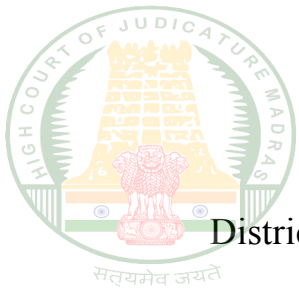
PRAYER : This Criminal Appeal has been filed under Section 415(2) of BNSS praying to call for the records and set aside the sentence and conviction imposed by the learned Judge, I Additional Special Court for NDPS Act Cases, Madurai District in C.C.No.21 of 2019, dated 26.03.2024.

For Appellant : Mr.S.M.A.Jinnah

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Judge, I Additional Special Court for NDPS Act Cases, Madurai



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District, dated 26.03.2024 in C.C.No.21 of 2019 convicting the appellant / A2 under Section 8(c) r/w 21(C) of NDPS Act and sentencing him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo Simple Imprisonment for two years.

2. The appellant is the second accused and the respondent is the complainant.

3.1. The case of the prosecution as it appears from the records is that, on 25.07.2018, at about 16.00 hours, P.W.3 - Inspector of Police, NIB-CID, Thoothukudi, has received a secret information regarding the storage of high value narcotic drugs in Door No.23, Manal street, behind Paniyamatha Kovil, Thoothkudi. Upon receipt of the information, PW3 prepared a report; recorded the same in the General Diary; and after reporting to the Deputy Superintendent of Police, she proceeded to raid the premises.

3.2. During search, one plastic bag, white and green in colour, printed with words "SPIC DAP" was found which contained 8 white colour polythene bags and 4 parcels wrapped in kakki colour. The 8 polythene bags contained dark green colour oil like liquid. On test, it



was found to be 'Hashish Oil'. The contraband was seized in the house of A2. Subsequently, A2 was arrested.

3.3. After completion of investigation, charge sheet has been laid against the appellant / A2 for the offences punishable under Sections 8(c) r/w 21(C) and 25 of NDPS Act. Both the accused were questioned under Section 313(1)(b) of Cr.P.C and they denied the charges and claimed to be tried. As A1 was absconding, the case was split up against him in C.C.No.1080 of 2023 and the case against the appellant / A2 is CC.No.21 of 2019.

3.4. After concluding the trial, the Trial Court held that the appellant / A2 was guilty for the offences punishable under Section 8(c) r/w 21(C) of NDPS Act and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo Simple Imprisonment for two years. Aggrieved over the same, this appeal has been preferred.

4. The learned counsel for the appellant / A2 submitted that there is no evidence to show that the seized contraband belonged to the appellant / A2.



5. It is submitted that when the appellant / A2 was questioned, he has stated that A1 brought the contraband items and himself being a neighbour, has concealed those items in his house. The said statement of A2 itself is sufficient to conclude that the house belonged to A2.

6. When A2 himself has admitted that the house belonged to him, the prosecution does not require to prove the said fact.

7. The other ground raised by the learned counsel for the appellant / A2 is that the weight of the container (around 2.2 gms) was neither added to the total weight of the contraband nor deducted while weighing the contraband, and the prosecution has simply claimed that the weight of the contraband is 5 gms; seizure mahazar did not have the signature of the appellant / A2; and no physical search was made on the appellant / A2, which point has been dealt by the learned Trial Judge in para No. 21 of the Judgement.

8. In paragraph no.42 of the Judgement, the Trial Court has dealt the above point raised by the counsel with regard to the weight of the container and the observation made therein itself seals the doubts in weighing the sample. So, the appeal cannot stand on the above ground.



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9. Next submission made by the learned counsel for the appellant is that the mandatory provision under Section 52-A of the NDPS Act has not been complied and that was not properly appreciated by the Trial Court. Even though this ground was raised during his oral submission, it is not found in the appeal grounds.

10. The compliance of procedures contemplated under Section 52-A of the NDPS Act would arise only at the time of disposing the seized narcotic drugs and psychotropic substances / contraband. As stated above, the case against A1 was split and till the conclusion of trial proceedings and pronouncement of Judgement, the contraband was still available and not disposed. Only if the seized items can be destroyed or disposed immediately after seizure and even before the conclusion of the Trial, the procedure contemplated under Section 52-A of the NDPS Act can be found. In fact, the learned Trial Judge has made an exhaustive observation about the non applicability of Section 52-A of the NDPS Act in the given circumstances of the case. For the sake of clarity, it is appropriate to extract the relevant paragraph of the Judgement of the Trial Court as under.



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"29. Now after the notification of The Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, there is a minor change to the above proposition. It has been held that the properties cannot be destroyed immediately, but can be destroyed only after the FSL report is received. Therefore this court holds that what is prescribed under section 52A(2) is the procedure to be followed and if followed, then the certificate issued by the Magistrate can be treated as primary evidence in respect of such offence as per section 52(A)(4). If the property is not to be destroyed immediately after its seizure, then in the view of this court, the learned counsel cannot contend that failure to adhere to this procedure would vitiate the trial process.

30. At this juncture this court is also inclined to refer to section 55 of the NDPS act. It reads as "An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, **to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.**" Here this provision would show that the samples are permitted to be taken at the Police Station, in the presence of the officer-in-charge of the Police station. Therefore the claim of the Accused that there is no provision under the act except Section 52A which provides for taking samples also does not appear to be fair and just.

31. In the judgement in Narendra Bhushan Dubey vs. State of Madhya Pradesh (now CG) reported in 2011 (1) CGLJ 259 the Hon'ble Chatttigarh High Court has laid down the consequence of non-compliance of Section 55 of the NDPS Act which reads thus: The statutory scheme of the Act engrafted under Section 55 requires the



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officer-in-charge of the police station to seal all the samples with his own seal. The legislative intention is that there should be fair investigation for keeping the seized article in safe custody of the highest officer of the concerned police station so as to eliminate the possibility of the sample being tampered with till the same reaches the hands of the chemical examiner. Under provision contained in Section 55 such a duty has been enjoined upon the officer in-charge of the police station with the manifest object that the senior officers can be trusted to be fair in investigation and not indulging in dubious practices. When the prescribed procedure is abandoned, it gives rise to gnawing suspicion particularly when in the present case, the officer in-charge/S.H.O. himself had seized the articles." Therefore this Court holds that the contentions raised by the learned Counsel for the accused with respect to Section 52A also does not appear to be applicable to the facts of this case, where the whole lot of the remaining contraband is still before the Court."

11. In view of the above discussion and the findings rendered by the Trial Court by rightly understanding the purview of Section 52-A of the NDPS Act, I feel the submission made by the learned counsel appearing for the appellant cannot be appreciated as a ground for this appeal.

12. The examination of petition of appeal and the copy of Judgement of the Trial Court, show there is no sufficient ground for inference has been made out. Hence, the appellant / A2, who has filed this appeal, could not be heard under Section 385 of Cr.P.C.

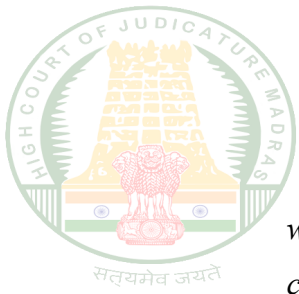


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13. At this juncture, the learned counsel for the appellant submitted that the appellant / A2 is entitled for detailed hearing of this appeal by calling for the records. In support of the same, he has cited the Judgement of the Apex Court held in the case of **Jitendra Kumar Rode vs. Union of India in Criminal Appeal No.... of 2023** arising out of **Special Leave Petition (Crl.) No.2063 of 2023, dated 24.04.2023.**

14. On perusal of the above Judgement, it is clear that there is no contradictory opinion in respect of invoking Section 385 of Cr.P.C. Only if the petition of appeal passes Section 384 of Cr.P.C, the next stage of calling for the records under Section 385 of Cr.P.C. would arise. Once the Court comes to the conclusion that the appeal does not made out any ground, there is no need for the appeal to be heard under Section 385 of Cr.P.C. The Judgement cited by the learned counsel also confirms the same in unequivocal terms. For the sake of clarity, the paragraph Nos.35 and 36 of the aforesaid Judgement are extracted hereunder.

"35. Protection of the rights under Article 21 entails protection of liberty from any restriction thereupon in the absence of fair legal procedure. Fair legal procedure includes the opportunity for the person filing an appeal to question the conclusions drawn by the trial court. The same can only be done when the record is available with the Court of Appeal. That is the mandate of Section 385 of the CrPC. Therefore, in the considered view of this Court, it is not within prudence to lay down a straightjacket formula,



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we hold that noncompliance with the mandate of the section, in certain cases contingent upon specific facts and circumstances of the case, would result in a violation of Article 21 of the Constitution of India, which we find it to be so in the instant case.

36. The language of Section 385 shows that the Court sitting in appeal governed thereby is required to call for the records of the case from the concerned Court below. The same is an obligation, power coupled with a duty, and only after the perusal of such records would an appeal be decided."

15. The above Judgement deals with the mandates under Section 385 of Cr.P.C. and it does not apply to an appeal which does not pass the test of 384(1)(a) of Cr.P.C. Having given an opportunity to the appellant / A2 under Section 384(1)(a) of Cr.P.C., and found that the appeal does not make out any ground for further hearing, this Court does not find it necessary to call for the records from the Trial Court.

16. The learned counsel for the appellant / A2 submitted that the learned Trial Judge has convicted and sentenced the appellant to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo Simple Imprisonment for two years and hence, some leniency is requested with regard to the 'in default sentence'.



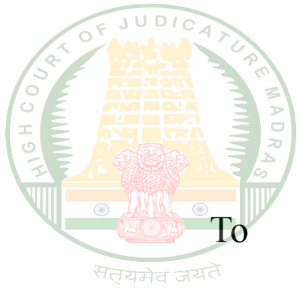
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17. As the substantive sentence has been imposed for 10 years Rigorous Imprisonment, I feel it is reasonable to modify / reduce the 'in default sentence' alone.

18. Accordingly, the criminal appeal is **partly allowed**. The conviction and fine amount ordered by the Trial Court is confirmed. The sentence imposed against the appellant / A2 insofar as 10 years rigorous imprisonment is also confirmed. The sentence imposed against the appellant / A2 insofar as 'in default sentence alone', is modified and reduced from '2 years simple imprisonment' to '1 month simple imprisonment'. **The appellant is therefore sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1,00,000/-, in default to undergo Simple Imprisonment for one month** for the offences punishable under Section 8(c) r/w 21(C) of NDPS Act. Consequently, the connected Miscellaneous Petition is closed.

09.06.2025

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To

1.The Judge,
I Additional Special Court for NDPS Act Cases,
Madurai District.

2.The Inspector of Police,
NIB - CID,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.

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