

Crl.A.(MD).Nos.169, 171, 182, 183 and 433 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	27.06.2025
Pronounced On	:	26.08.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.169, 171, 182, 183 and 433 of 2023

and

Crl.M.P.(MD).No.11151 of 2024

Parthipan	... Appellant / Accused No.3 in Crl.A.(MD).No.169 of 2023
Ganesan	... Appellant / Accused No.2 in Crl.A.(MD).No.171 of 2023
Dineshkumar	... Appellant / Accused No.5 in Crl.A(MD).No.182 of 2023
Selvakumar	... Appellant / Accused No.1 in Crl.A(MD).No.183 of 2023
Dhanush Kodi	... Appellant / Accused No.4 in Crl.A(MD).No.433 of 2023

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
Theni – NIBCID Police Station,
Theni District.
(Crime No.28 of 2021)

... Respondent / Complainant
in all appeals



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PRAYER: Criminal Appeals have been filed under Section 374(2) of the Criminal Procedure Code, to call for the records in C.C.No.383 of 2021 dated 02.02.2023 on the file of the learned Principal Special Court for EC and NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Pitchai Muthu,
Advocate
in Crl.A.(MD).Nos.169, 171, 182
and 183 of 2023

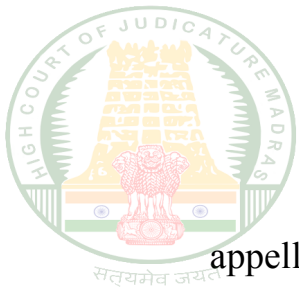
Mr.KR.Bharathi Kannan,
Advocate
in Crl.A.(MD).No.433 of 2023

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
in all appeals

COMMON JUDGEMENT

Since these criminal appeals are arising out of the same crime, these appeals are taken up for hearing together and disposed of by way of this common judgment.

2.The appellants are said to have committed the offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') for the alleged possession of 52 kg of Ganja. The learned Principal Special Court for EC and NDPS Act Cases, Madurai convicted the

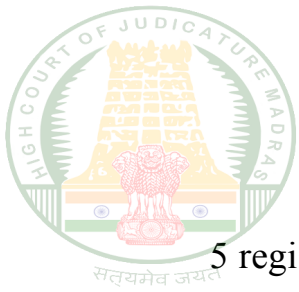


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appellants in C.C.No.383 of 2021 under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) *of NDPS Act, 1985* by its judgment dated 02.02.2023 and sentenced *them to undergo 10 years Rigorous Imprisonment* and to pay a *fine of Rs.1,00,000/- each*, in *default to undergo 6 months Simple Imprisonment each*. Challenging the same, the appellants have filed these criminal appeals.

3.Brief facts necessary for disposal of this appeal, are as follows:

3.1. According to the prosecution, P.W.4 received secret information on 20.01.2021 at about 11.45 hours regarding the illegal transport of a huge quantity of ganja. He reduced the information into writing and submitted it to his higher official. Thereafter, along with the P.W.4, and the informer, had proceeded to the place of occurrence. The informer identified two two-wheelers, and P.W.4, along with his team, apprehended the accused. Upon following the procedure under Section 50 of the NDPS Act, they recovered two gunny bags from A1 to A6, one weighing 30 kg and the other 22 kgs. After properly drawing samples and sealing the samples, the remaining contraband, along with the two two-wheelers, were taken to the police station and handed over to P.W.5. P.W.



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5 registered a case in Crime No.37 of 2021 under Sections 8(c) read with 20(b)(ii)(C), 25, and 29(1) of the NDPS Act, 1985. Thereafter, the accused, along with the contraband, were remanded and produced before the learned jurisdictional Magistrate. Subsequently, the investigation was transferred to P.W.6 and later to P.W.7, as per the orders of the ADGP. Thereafter, P.W.7 continued the investigation and filed the final report against all the accused under Sections 8(c) read with 20(b)(ii)(C), 25, and 29(1) of the NDPS Act, 1985.

3.2. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of the NDPS Act 1985 and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood trial.

3.3. The prosecution, in order to prove its case, had examined 7 witnesses as P.W.1 to P.W.7 and exhibited 26 documents as Ex.P.1 to Ex.P.26 and marked 4 material objects as P.M.O.1 to P.M.O.4.



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4.The learned Trial Judge, considering the materials and circumstances found that accused No.1 to 5 in C.C.No.383 of 2021 were guilty and passed the conviction and sentence against the appellants as stated above. The same was challenged by the appellants by filing these appeals before this Court.

5.The learned counsel appearing for the appellants made the following submission:

5.1.The learned counsel for the appellants would submit that there was no compliance of Section 42 of the NDPS Act and that there exists a material contradiction between the evidence of P.W.5, P.W.1, P.W.3, and P.W.4 with respect to the recording and acknowledgment of information. Therefore, the version regarding the recording of information stated by P.W.1 and P.W.6 is unreliable, and consequently, there was no proper compliance of Section 42 of the NDPS Act. Hence, he seeks acquittal.

5.2. It is further submitted that though the final report was filed against six accused persons, only five of them were convicted while one (A6) was acquitted. The learned counsel contends that, as the same evidence was adduced against all the accused, convicting A1 to A5 while



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acquitting A6 on the same set of evidence is impermissible. The learned counsel also submits that there was inordinate delay of 19 days in producing the contraband before the learned Special Judge. He further points out that the two-wheeler was parked at a distance of about 5 feet from the place of occurrence, where the accused were standing and apprehended, and therefore, there was no conscious possession. It is also contended that the ownership of the property was not proved. Accordingly, the learned counsel prays for setting aside the conviction and acquit the appellants.

5.3. The prosecution was not able to produce any material to prove the exact time and other factor, regarding receipt of secret information. In the said circumstances, there was no strict compliance of Section 42 of NDPS Act, 1985.

5.4. The contraband was belatedly produced before the Court without any explanation.

5.5. There was no examination of independent witnesses.



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5.6.The trial Court failed to consider the factual contradictions and

the discrepancies regarding the compliance of Section 42 of the NDPS Act, 1985, preparation of seizure mahazar and the place of occurrence.

5.7. Further, the respondent, failed to establish the ownership of the vehicle used by the accused; the real owner of the vehicle was not at all identified. Therefore, the trial Court did not frame the charge for the offence under Section 25 of the NPDS Act, 1985, whereas the trial Court believed the prosecution theory of the appellants had driven the vehicle, which was not at all supported by documentary evidence. How the vehicle came into the possession of accused persons was not at all explained; it remains unanswered. Therefore, he seeks for acquittal.

6.The learned Additional Public Prosecutor made the following submissions:-

6.1. P.W.1, P.W.3, and P.W.4 have clearly deposed about the recovery of the contraband from the appellants. Their evidence is cogent and trustworthy, and the conviction and sentence imposed against the appellants are legally valid. P.W.4 has categorically deposed about the



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receipt of the information, its recording in the general diary, and thereafter reducing it into writing, forwarding the same to P.W.5, and obtaining the necessary permission. Therefore, there was clear-cut compliance of the mandate of Section 42 of the NDPS Act. Ex.P17 also clearly establishes such compliance. Hence, the contention of the learned counsel for the appellants that there was non-compliance with reference to Section 42 is misconceived, and the appeal deserves to be dismissed.

6.2. The recovery was effected on the basis of a joint confession made by five of the accused, and the further disclosure regarding the two bags of ganja was duly proved. Therefore, their conscious possession stands established. The acquittal of A6 is not a ground to acquit A1 to A5, particularly when the evidence against them is cogent and trustworthy. The doctrine of parity has no application in the present case. It is further submitted that the contraband was not recovered from the two-wheeler; rather, the accused were found standing near the two-wheeler, and upon being apprehended, they disclosed the place where the contraband was kept. Therefore, conscious possession has been clearly proved.



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6.3. He would further submit that, regarding the receipt of the information, minor and immaterial contradictions have occurred, which do not affect the root of the prosecution case. In the absence of any explanation from the accused regarding their presence with a huge quantity of ganja, the presumption under Sections 54 and 35 of the NDPS Act operates against them. Hence, the submissions of the learned counsel for the appellants are liable to be rejected.

6.4. Therefore, he seeks for confirmation of the conviction and sentence passed by the learned trial Judge.

7.This Court considered the rival submissions made by the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

8.The point for determination in these appeals is whether the conviction and sentence imposed on the appellants under Sections 8(c) read with 20(b)(ii)(C), 25, and 29(1) of the NDPS Act, after the acquittal of A6, is legally sustainable?



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9. Discussion on compliance under Section 42 of the NDPS Act:-

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9.1. P.W.4 received the secret information on 20.01.2021 at about 11.45 hours, about the illegal possession of the contraband by the appellants. P.W.4 reduced the said information in writing after making entry in the General Diary. He also sent the information to the Immediate Superior, namely, P.W.5. P.W.5 also acknowledged the same **by making his signature** and granted permission to conduct raid. **The said document was marked under Ex.P.17.** The same reached the Court on the date of the recovery itself. **Apart from that, the document was produced on the date of remand itself.** There was no dispute over the said document. P.W.4 and P.W.5 clearly deposed about the above facts in a cogent manner and they also deposed about the acknowledgement of the information. Therefore, the contention of the learned counsel for the appellant that there is non-compliance of Section 42 of the Act, is misconceived and the same is against the facts. In this aspect, the prosecution clearly proved the compliance under Section 42 of the Act.

9.2. The learned counsel for the appellant would submit that the prosecution case itself is that the searching officer received the secret information and he did the search, recovery and arrest. The learned trial



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Judge is not correct in holding that the Section 42 of the Act, is not applicable without considering the plea of the accused that the non-compliance of the mandatory procedure under Section 42 of the Act is fatal as per the principle laid down by the Hon'ble Constitution Bench of Supreme Court in ***Karnail Singh Vs, State of Haryana*** reported in ***(2009) 3 SCC (Crl.) 887***.

9.3. It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble three Judge Bench of the Hon'ble Supreme Court in ***SK.Raju Alias Abdul Haque Alias Jagga Vs, State of West Bengal*** reported in ***(2018) 9 SCC 708*** has held that the search was made in the public place and therefore, Section 43 of the Act alone is attracted and necessity to comply with the requirement under Section 42 will not arise.

9.4.The learned counsel for the appellant would submit that the Hon'ble Supreme Court in the ***S.K.Raju case*** on facts has held that Section 43 of the Act alone is applicable. In the ***S.K.Raju case***, even though information was received prior to the search and recovery of contraband from the accused, the information received was '*when he was walking along the Picnic Garden Road in front of Falguni Club*', and



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according to the Hon'ble Supreme Court, it was not a building, conveyance or enclosed place. Further according to the Hon'ble Supreme Court, the said recovery was made in the public place, which was accessible to the public and fell within the ambit of the phrase of the public place in the explanation to Section 43 of the Act. Therefore, the Hon'ble Supreme Court has held that Section 42 of the Act had no application. Further, according to the learned counsel for the appellant, the Hon'ble Constitution Bench judgment '*Karnail Singh*' was not placed. Therefore, the learned counsel for the appellant by relying the Hon'ble judgment of Supreme Court in *Dr.Shah Faesal and Others Vs. Union of India and Another Court* reported in *2020 4 SCC 1* would submit that the ratio decidendi in *S.K.Raju case* is contrary to the dictum of larger bench and the same is not binding or otherwise the observation of the *S.K.Raju case* in para 12 of the judgment reported in *2018 9 SCC 708* is only obiter dictum and therefore, he would submit that the non-compliance of Section 42 of the Act would vitiate the entire proceedings. Therefore, he seeks for acquittal. He also fairly placed the following judgments of the Hon'ble Supreme Court decided for and against him.

i) State of Punjab Vs. Balbir Singh reported in *(1994) 3 SCC 299*

ii) State of Pinjab Vs, Baldev Singh reported in *(1999) 6 SCC 172*



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iii) *State of Haryana Vs. Jarnail Singh and Others* reported in (2004) 5

SCC 188

iv) *Karnail Singh Vs, State of Haryana* reported in (2009) 3 SCC (Cri)

887

v) *Sukhdev Singh Vs, State of Haryana* reported in(2013) 2 SCC 212

vi) *State of Rajasthan Vs, Jagraj Singh @ Hansa* reported in (2016) 11

SCC 687

**vii) *Mukesh Singh Vs, State (Narcotic Branch of Delhi* reported in
(2020) 10 SCC 120**

**viii) *Boota Singh and Others Vs. State of Haryand* reported in (2021)
19 SCC 606**

**ix) *Najmunisha Vs. State of Gujarat and Another* reported in 2024(1)
MWN (Cr.) 481 (SC)**

x) *Darshan Singh Vs, State of Haryana* reported in 2016 (14) SCC 358

9.5.Section 41(1) of the NDPS Act empowers the jurisdictional learned Judicial Magistrate to issue warrant for arrest of person or for the search of any building, conveyance or place for the searching officers, who come under the purview of the NDPS Act, who have reason to believe any narcotic drugs or psychotropic substance or controlled substance is illegally acquired or concealed.



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9.6. Section 41(2) of the Act empowers the searching officer, who have 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.

9.7. Section 42 of the Act following Section 41 of the Act mandates to follow certain procedures 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.

9.8. 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 the empowered officer is duty bound to reduce the said information in writing and shall send the same to his immediate superior



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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 requirements of Sections 42(1) and 42(2) nor did Sajjan 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



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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 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



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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 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.”

9.9.From the above, it is clear that when the officer received the secret information and proceeded to make search, recovery and arrest the accused along with contraband, it is the duty of the officer to comply the requirement of Section 42 of the Act as per the above guidelines.



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9.10. From the reading of Section 43 of the Act, it is clear that

when the officers by chance make recovery while on patrol duty, they need not comply the requirement of Section 42 of the Act. Sections 42 and 43 of the Act are incorporated in the Act to meet out the different situations. Section 43 of the Act authorised empowered officer mentioned in Section 42 of the Act to search and seize the contraband in any public place namely, any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public or in transit, without warrant in the case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc., They had not acted on the basis of the earlier information. But, in the case of the Section 42, the search officers acted on the basis of the receipt of the earlier information about the illegal possession, transportation, concealment of the contraband. In short, Section 43 of the Act, is to meet the emergent situation of chance recovery. Therefore, legislature has made clear about terms of the Sections 42 and 43 of the Act. The Hon'ble Constitution Bench also reiterated the said requirement of Section 42 in the case of Karnail Singh. Therefore, the finding of the learned trial Judge that Section 43 is applicable to the present case is not correct. But, this Court by exercising its power under Section 386

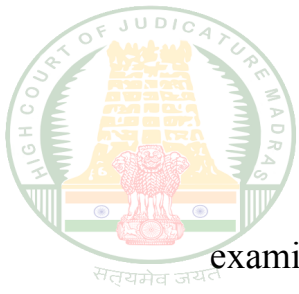


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Cr.P.C., makes an effort to consider the plea of the learned counsel for the appellant whether there is mandatory requirement of the compliance of Section 42 of the Act, on the basis of the available evidence in this case.

9.11. In this case, P.W.4 received the secret information about the illegal possession and transporation of the contraband, and he reduced the same in writing. He reported the said information to his Immediate Superior. The Immediate Superior also acknowledged the same. To prove the same, the prosecution produced Ex.P.17. From the perusal of Ex.P.17 and appreciation of evidence of P.W.4, this Court finds the compliance of mandatory requirements of Section 42 of the Act. The learned counsel for the appellant heavily relied on the discrepancies relating to the recording of information and reducing in writing and reporting the said information reduced in writing to his superior officer to disbelieve the case of the prosecution about the compliance of the procedure stated in Section 42 of the Act. The learned counsel for the appellant also submitted that the Immediate Superior officer who is said to have received the information has not deposed about the receipt of the information from the searching officer. Even in some cases, said Immediate Superiors also are not



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examined. In all cases, there is some discrepancy between the evidence

of the Immediate Superior and the search officer relating to the compliance of Section 42 of the Act. This Court finds no material discrepancies which would affect the evidence of the witnesses and the official witnesses in this aspect. When the document Ex.P17 is produced and marked without objection and the same was proved through the examination of author of the document and the signature of the officer found in the document is not disputed and the same reached to the Court within reasonable time, the non-examination of the Immediate Superior to depose about the said document is not a material circumstance to disbelieve the case of the compliance of Section 42 of the Act. When the Immediate Superior officer comes into the box and deposes about the receipt of the information, there is no further requirement about the compliance of Section 42 of the Act. The minor discrepancies in the evidence of the 'Immediate Superior' and the 'Searching Officer' when it has not affected the prosecution case of receipt of information are not grounds to disbelieve the compliance. Further, the Hon'ble Supreme Court reiterated the principle that unless the discrepancies go to the root of the prosecution version, the same is not a ground to disbelieve the testimony of the witness. Apart from that, most of the witnesses are the



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police officers and examination is conducted after a lapse of several

months and we cannot expect them to keep everything vivid in their memory. Each witness would depose in his own way on his perception of the occurrence. One may say 'a' the other may say 'A'. Therefore, sitting in the armchair, this Court cannot expect the witness to depose before the Court with photographic memory. Therefore, this Court finds that the prosecution clearly established the strict compliance of Section 42 of the Act. Therefore, this Court is not inclined to accept the argument of learned counsel for the appellant that the prosecution has not complied with the requirement of Section 42 of the Act.

10.Proof of consious possession:

10.1. All the accused jointly disclosed about the possession of two bags of ganja, which were recovered by P.W.4 along with the other officials. P.W.4 has clearly deposed about the disclosure of the said two gunny bags by A1 to A5, and his testimony is corroborated by the evidence of P.W.1. The *athatchi* was also marked in evidence, and the witnesses were subjected to incisive cross-examination by the defence counsel regarding the said ganja. The *athatchi* contains the signatures of the accused which have not been disputed. Therefore, from the *athatchi* (Ex.P9) the conscious possession of the accused stands clearly proved.

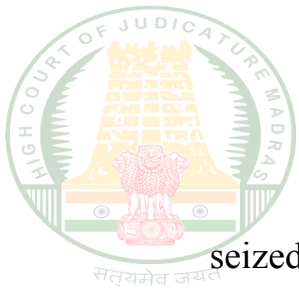


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11.1. The learned counsel for the appellants submitted that the delay in producing the contraband before the Special Court is fatal to the prosecution. It is true that there was a delay of 19 days in producing the contraband before the Special Court. However, this delay is not material in the present case, as the contraband was initially produced on 20.01.2021 before the learned Judicial Magistrate, along with the accused, at the time of remand. All the contraband had been duly sealed in bags and were later produced before the Special Court. At the time of recovery, the entire nation was under going the ordeal of COVID-19 restrictions, which justifies the delay in production before the Special Court. This delay, by itself, is not a ground to disbelieve the evidence of the recovery witnesses.

11.2. Once the material was produced before the learned Judicial Magistrate and its identity was affirmed, this Court is unable to accept the contention of the learned counsel for the appellants regarding the delay. In similar circumstances, the Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379***, has held that delay in producing



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seized contraband before the Court may be a ground to doubt the prosecution case only where the seizure itself is doubtful. In the present case, as discussed above, the seizure of the contraband has been proved beyond all reasonable doubt, and no specific reason has been attributed against P.W.4 for registering a false case against the accused persons. The learned Trial Judge has therefore rightly held that the delay of 19 days in this case is not a material circumstance.

12.Discussion on the proof of ownership of the vehicle:

12.1.The Hon'ble Supreme Court in the case of ***Rizwan Khan Vs.***

State of Chattisgarh has held as follows;

"30. Now as far as the submission on behalf of the accused that the ownership of the motor cycle (vehicle) has not been established and proved and/or that the vehicle has not been recovered is concerned, it is required to be noted that in the present case the appellant and other accused persons were found on the spot with the contraband articles in the vehicle. To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle



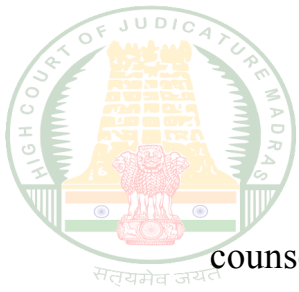
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is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act? Therefore, merely because of the ownership of the vehicle is not established and proved and /or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot".

12.2 Therefore this court declines to accept the argument of the learned counsel for the appellant that without proof of the ownership of the vehicle conviction under section 25 of NDPS Act is not maintainable. Once the prosecution has been successful in proving and establishing the recovery of contraband from the accused on the occurrence place, police need not establish ownership of the vehicle.

13. The evidence also shows that the two-wheeler, the accused, and the contraband were found in the same locality, and the recovery was made after the accused were nabbed along with the two-wheeler. The presence of the accused along with the two-wheeler have been clearly spoken to by P.W.1 and P.W.2. Therefore, the argument of the learned



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counsel for the appellants that the contraband was not recovered from the two-wheeler is not a circumstance to disbelieve the recovery of the contraband. In view of the above findings, this Court finds no merit in the appeal, and the same deserves to be dismissed.

14. The learned counsel for the appellants made the detailed submission that the recovered contraband was without flowering tops. Therefore, the case does not come under the category of the commercial quantity. Therefore, this Court decided to hear the arguments in details on 27.06.2025 and the said proceedings are extracted hereunder:-

*“ When the matter taken up for hearing on 06.06.2025,
this Court passed the following order :-*

“The case is posted to clarify whether the contraband without 'flowering tops' would come under the definition of ganja under Section 2(iii)(b) of NDPS Act under the caption 'for clarification'.

2.The learned Additional Public Prosecutor would submit that the above aspect is question of fact and law and the same has not been raised before the trial Court, But, on going through the records, he fairly submitted that the prosecution documents have not revealed about the reference of 'flowering tops'. But, there is reference that the recovered contraband was found with “கதிரிகளுடன் கூடிய சிறிய இலைகள்” and the said description denotes flowering tops and he seeks time to address the issue in detail.



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3.The said issue has its own significance and any decision is likely to have its impact on the pending huge number of cases in Tamil Nadu. Therefore, this Court inclines to give time to address the issue in order to provide opportunity to the learned Additional Public Prosecutor.

4.Accordingly, the case is adjourned to 27.06.2025 finally. The learned Additional Public Prosecutor is hereby directed to get instruction in addition to the argument on the above legal aspects:-

1. Date of the arrest of each accused and their period of incarceration.

2.Relevant portion of the recovery mahazar and the chemical analysis report.

4.It is open to the learned Additional Public Prosecutor to get expert's opinion about the percentage of the offending Narcotic Drug namely, 'TNC' in the recovered contraband.

5.Post the matter finally on 27.06.2025. ”

2. In continuation of hearing dated 06.06.2025, this case is taken up for hearing today and this Court asked about the consent of the learned counsel for the appellants and the learned Additional Public Prosecutor to continue the rehearing as per decision of the Hon'ble Supreme Court of India in the case of Anil Rai Vs State of Bihar reported in (2001) 7 SCC 318, on the legal issue whether the contraband without flowering tops would come under the definition of ganja under Section 2(iii)(b) of NDPS Act and they have consented to hear the appeal further. After getting their willingness, this Court heard the learned Additional Public Prosecutor and the learned counsel for the appellant.



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3. The learned Additional Public Prosecutor made a detailed submission by producing the “manual for use by the National Drug Analysis Laboratories” and producing the judgment of Hon'ble Supreme Court reported in 2009 2 SCC 26, and the judgment of this Court reported in CDJ 2010 MHC 2446 (Ramesh Case) and unreported judgment of this Court in Crl.OP(MD)No.18999 of 2024 that there was no reference about either flowering or fruiting tops. But, there is mentioning of 'கதிரிகள்' and therefore, the same includes flowering and fruiting tops. Hence, the learned Additional Public Prosecutor submitted that the recovered ganja with leaves, seeds, 'கதிரிகள்“ would come under the definition of ganja. He also submitted that as per Section 2(iii)(c) of NDPS Act, “any mixture other than the flowering tops also would come under the definition of ganja”.

4. The learned counsel for the appellants also cited the various Hon'ble High Courts and this Court and seeks this Court to hold that from the recovered ganja, the luxuriant leaves, stalk, seeds have to be excluded and conviction under Section 20(b)(ii)(C) of NDPS Act may be converted into conviction under Section 20(b)(ii)(B) of NDPS Act and seeks to reduce the sentence of imprisonment.

5. After hearing the learned counsel appearing for both side at length, this Court reserved the matters for judgment.”



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15. This Court has perused the cross-examination with regard to

the Section 57 report and the chemical analysis report. It is true that, in the chemical analysis report, there is no specific mention of the flowering and fruiting tops. However, the report clearly discloses the presence of cannabinoids. Even if the ganja was recovered along with leaves, seeds, and stems, as suggested by the learned counsel for the appellants, weighing the flowering tops, fruiting parts, and other materials separately would not make any material difference, since the recovered contraband weighs more than 30 kg, which is well above the commercial quantity fixed under the NDPS Act, i.e., 20 kg.

16. Further, there is no evidence on record from the side of the accused to show that the contraband was separated from the leaves or other parts so as to bring its weight below the commercial quantity. Only if the weight of the recovered contraband was between 20 kg and 25 kg the argument of the learned counsel for the appellants could be considered. In the present case, as the recovered contraband weighs more than 25 kg, this Court is not inclined to accept the contention that the case falls below the commercial quantity.



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17.Conclusion:-

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From the evidence, it is apparent that P.W.4 received secret information and the said secret information received was duly reduced in writing and forwarded to the immediate Superior and on his instruction i.e., “Received and take action as per law”, the team has proceeded to the spot mentioned in the information and thereafter, search, seizure and arrest had been done. Samples were duly drawn and packed with seals and the remaining contraband was also duly packed separately. The recovered contraband of 52 kgs of Ganja is more than the commercial quantity i.e., 20 Kg. The said samples were subjected to analysis and the Report confirmed the presence of “cannabis”.

17.1. The entire seized contraband namely recovered Ganja was produced before the Court and marked without any objection as M.O.1 to M.O.4. The prosecution witnesses viz., P.W.1 to P.W.7, deposed before the Court in a cogent manner and their evidence is trustworthy and this Court finds no infirmities in their evidence either to disbelieve or discard the prosecution case that the appellants transported 52 kgs of Ganja and the same was in their conscious possession. The appellants never said



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anything in their 313 Cr.P.C questioning nor produced any evidence to disprove the case of the prosecution in compliance with terms of Sections 54 and 35 of the NDPS Act. Therefore, the prosecution has clearly proved their case beyond reasonable doubt and the accused never dispelled the presumption as required under Section 35 of the NDPS Act and this Court does not find any infirmities in the judgment of the trial Court. Thus, the question is answered against the appellants. Therefore, all the appeals deserve to be dismissed.

18. In the result,

(i) The Criminal Appeals are dismissed and the judgment passed by the learned Principal Special Court for EC and NDPS Act Cases, Madurai in C.C.No.383 of 2021 dated 02.02.2023 is hereby confirmed.

(ii) The bail bond executed by the appellants are hereby cancelled.

(iii) The learned trial Judge is hereby directed to take steps to secure the accused and confine them in prison to undergo their remaining period of imprisonment.

Consequently, the connected miscellaneous petition stands dismissed.



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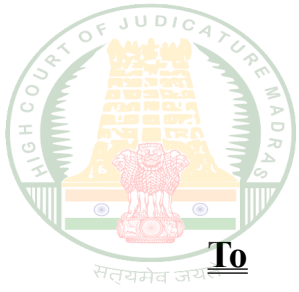
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19. Summary of Discussion:

Finding	Paragraph Nos.
Brief facts	3-3.3
Submission of the learned Counsel for the appellants	5-5.7
Submission of the learned APP	6-6.4
Discussion on compliance under Section 42 of the Act	9-9.11
Proof of conscious possession	10-10.1
Delay in producing the contraband	11-11.2
Discussion on the proof of ownership of the vehicle	12-12.1
Conclusion	17-17.1
Result	18

26.08.2025

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

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- 1.The learned Special Judge,
Principal Special Court for EC and NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Theni – NIBCID Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Pre-delivery order made in
Crl.A.(MD).Nos.169, 171, 182, 183 and 433 of 2023

26.08.2025