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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	07.01.2025
Pronounced On	:	21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.307 of 2023 & 206 of 2024

Nagammal

... Appellant/ Accused No.2
(in Crl.A.(MD).No.307 of 2023)

Pandiyammal

... Appellant/ Accused No.1
(in Crl.A.(MD).No.206 of 2024)

Vs.

The State represented by,
The Inspector of Police,
KArimedu Police Station,
Madurai District.
(In Crime No.1466 of 2020)

... Respondent/ Complainant
(In both appeals)

COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code, to call for the entire records in C.C.No.16 of 2021 dated 28.03.2023 on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai, and set aside the same.



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For appellant : Mr.M.Jegadeesh Pandian
(In both appeals)

For respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor
(In both appeals)

COMMON JUDGMENT

Since these two appeals are arising out of the same occurrence and filed against the order of conviction made in C.C.No.16 of 2021 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, these two appeals are taken up together for hearing and disposed of by way of this common judgment.

2. The appellants/ A2 & A1 in C.C.No.16 of 2021 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, have filed these Criminal Appeals before this Court challenging the conviction and sentence imposed against them in the impugned judgment dated 28.03.2023. The conviction and sentence is as follows:



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<i>Appellants Rank</i>	<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
A2 & A1	8(c) r/w 20(b)(ii)(B) of the NDPS Act	5 years R.I each and to pay a fine of Rs.40,000/- each in default to undergo 6 months S.I each

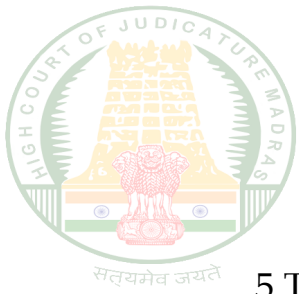
3. According to the prosecution, on 05.10.2020 at about 11.00 a.m, P.W.3, Sub Inspector of Police, Karimedu Police Station, received the secret information regarding the smuggling of Ganja by the appellants. He recorded the said information in the General Diary/Ex.P.4 and informed the same to his superior/P.W.4 and obtained permission. Thereafter, at 11.30 p.m, he proceeded to the occurrence place along with his team and the informer. At 12.30 p.m, they found five persons, who were coming in 3 two wheelers bearing Reg.Nos.TN-58-BC-9390, TN-58-AP-6669 and TN-58-AC-4767 and the informer identified them. On seeing them, P.W.3 surrounded the appellants and other three persons and made a search on them under Ex.P1/Search Consent Letter and recovered 22 Kgs of Ganja (A1 & A2 -11 kg, A3 & A5 - 11 kg) from the accused in two white colour plastic gunny bags and sale consideration of Rs.7,300/-



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and took samples from each bag by following the procedure stated in the NDPS Act. Then, they arrested the accused and taken them to the Station and registered the case in Crime No.1466 of 2020 for the offence punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act under Ex.P.7 and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by the Investigating Officer/P.W.4 and he filed the final report after obtaining the Chemical Analysis Report and examining the witnesses. The learned trial Judge has taken the same on file in C.C.No.16 of 2021.

4. After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. 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) (B) of 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 for trial.

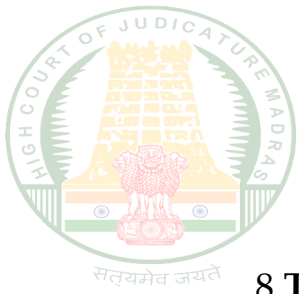


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5.The prosecution, in order to prove its case, had examined 4 witnesses as P.W.1 to P.W.4 and exhibited 15 documents as Ex.P.1 to Ex.P.15 and marked 6 material objects as M.O.1 to M.O.6.

6.When the accused were examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against them, they denied the evidence as false and further stated that a false case was foisted against them. The accused neither produced any documents nor examined any witness on his side.

7.The learned Trial Judge, considering the materials and circumstances found that the accused Nos.3 to 5 in C.C.No.16 of 2021 were not guilty, and acquitted them from all the charges and held that the appellants herein were guilty, and passed the conviction and sentence against them as stated above and acquitted them from the charge under Section 25 and 29(1) of the NDPS Act.



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8. The learned counsel for the appellants in both the appeals made the following submissions:-

8.1. There was a delay in producing the contraband before the Court below and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.

8.2. He submitted that there is no compliance of Sections 42 & 50 of NDPS Act, in letter and spirit. Therefore, the conviction and sentence passed against the appellants is to be set aside.

8.3. The non examination of the independent witnesses is an additional circumstance, which creates doubt over the recovery of the contraband as alleged by the prosecution.

8.4. The learned trial Judge acquitted the accused Nos.3 to 5 from all the charges on the ground that the prosecution did not obtain the signature of the accused in the athachi. Similarly, the signature of the appellants also were not obtained in the athachi.

8.5. There was no compliance under Section 57 of the NDPS Act. Hence, he prayed to allow these appeals by setting aside the conviction and sentence passed by the learned trial Judge.



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

9.1.The delay in producing the contraband before the Court below is not a material lapse, to acquit the appellants, when the entire contraband was produced before the Court below at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate and thereafter, the same was produced before the Special Court.

9.2.The said contraband was marked as material object before the trial Court without objection and hence, the contention of the learned counsel for the appellants is not legally sustainable.

9.3.The Hon'ble Constitution Bench of the Supreme Court in *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120 reiterated the principle that the non-examination of the independent witnesses is not a circumstances to disbelieve the evidence regarding recovery, when the other evidence are cogent and trust worthy. In this case, the learned trial Judge has considered the entire evidence to



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hold that the recovery from the appellants was proved in accordance with law.

9.4. In this case, the recovery was made from the bags of the appellants and hence, the procedure under Section 50 of the NDPS Act is not applicable.

9.5. In all aspects, the prosecution clearly proved the case through evidence and contemporaneous documents. Therefore, he prayed for dismissal of the appeals.

10. 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.

11. The question arises 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?*



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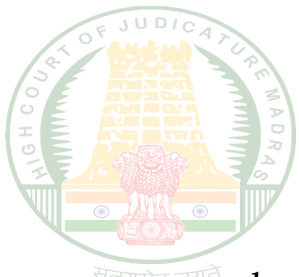
12.P.W.3 had received the secret information about the illegal transportation of Ganja by the appellants on 05.10.2020 at 11.00 a.m. Thereafter, after making entry in the General Diary and reduced it in writing and the same was sent to the superior officer under Ex.P4. In Ex.P4, there is a clear mention about the information sent to the superior and the same was done as per the compliance of the Hon'ble Constitution Bench judgment in the case of *Karnail Singh Vs. State of Haryana* reported in (2009) 8 SCC 539. The said document was marked and there was no dispute over the said document. Even though, they were subjected to cross examination, nothing was elicited to disbelieve the said documents. Therefore, in this case, the procedure under Section 42 of the NDPS Act, is complied with. P.W.3 after recording the information and complying the procedure under Section 42 of the NDPS Act, proceeded to the occurrence place as stated by the informer, namely, Amma Bridge Roundana, Arappalayam, Madurai, on 05.10.2020 at about 11.30 am. By following the procedure, he recovered the contraband from the gunny bags carried by the appellants. The said evidence of P.W.3 corroborated with the evidence of P.W.1 & P.W.2. Both were subjected to cross



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examination and nothing was elicited to disbelieve their version. Further, in the evidence of P.W.1 and P.W.2, there are no material contradictions or discrepancies between their version relating to the recovery of the contraband. Their evidence are cogent and trustworthy. No material was elicited to disbelieve their version or any case of false implication. Therefore, the recovery was proved in accordance with law.

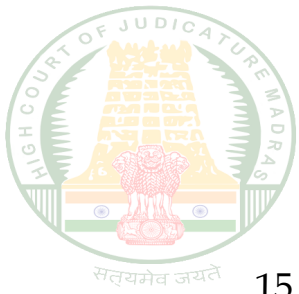
13.P.W.3, had taken the samples from each bag, which were carried by the appellants and the other accused and properly sealed the same and the remaining contraband was also properly sealed. Then, they prepared mahazar and brought the accused, remaining contraband and the samples to the police station and registered the case. Thereafter, he prepared the report under Section 57 of the NDPS Act and submitted to P.W.4. P.W.4 clearly deposed about the receipt of the information under Section 42 of the NDPS Act and also the report submitted by P.W.3. He also deposed about the fact that the accused along with contraband under Form-91 was produced before the Court at the time of remand itself. There was no delay in producing the entire contraband along with the



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sample taken under M.O.1 to M.O.6. The Chemical Analyst Report speaks about the presence of cannabis in the samples produced before him and the report also was marked as Ex.P.12. Therefore, in all aspects, the prosecution clearly proved the offence under Section 8(c) r/w 20(b)(ii) (B) of NDPS Act. This Court finds no merit in the contention of the learned counsel for the appellants to disbelieve their version. Hence, the conviction and sentence imposed by the learned trial Judge is liable to be confirmed.

14. However, considering the age of the appellant in CrI.A(MD)No. 307 of 2023, who is aged about 76 years and also considering the fact that the daughter of the appellant in CrI.A(MD)No.206 of 2024 is suffering from Bipolar Affective Disorder and she has been under treatment for the past 6 years and except the appellant, no one is available for taking care of her, this Court is inclined to reduce the sentence from 5 years Rigorous Imprisonment to sentence period **already undergone** for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.



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15. In view of the above, though the conviction passed by the trial Court for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is hereby confirmed, sentence of 5 years Rigorous Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is reduced to the period, which was already undergone by the appellants. Fine amount with default sentence is hereby confirmed.

16. With the above modification, the Criminal Appeals are partly allowed.

21.01.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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Note : Issue order copy on 21.01.2025



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To

- 1.The II Additional Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Karimedu Police Station, Madurai District.
- 3.The Superintendent of Prison,
Special Prison for Women, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN.J.

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