



Crl.A.(MD).Nos.483, 489 & 495 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	12.09.2025
Pronounced On	:	15.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.483, 489 & 495 of 2023

and

Crl.MP(MD)No.9190, 9247 & 9483 of 2023

Jegan

... Appellant/ Accused No.3
(in Crl.A(MD)No.483 of 2023)

Manoharan @ Ganesan

... Appellant/ Accused No.1
(in Crl.A(MD)No.489 of 2023)

Devadoss @ Rasul Sulthan

... Appellant/ Accused No.2
(in Crl.A(MD)No.495 of 2023)

Vs.

The State rep by

The Inspector of Police,

NIB-CID, Madurai.

(In Crime No.100 of 2015)

... Respondent/ Complainant
(In all Appeals)

COMMON PRAYER: Criminal Appeals have been filed under Section 374(2) of the Criminal Procedure Code, to call for records and allow the appeals and acquit the appellants by setting aside the impugned judgment passed by the learned Principal Special Judge for EC & NDPS Act Cases, Madurai, in C.C.No.255 of 2015 dated 26.05.2023.

(In all Appeals)

For Appellants

For Respondent

: Mr.M.G.Martin Manivannan

: Mr.R.Meenakshi Sundaram

Additional Public Prosecutor



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COMMON JUDGMENT

Since these criminal appeals are arising out of the same Crime No.329 of 2016, these cases are taken up for hearing together and disposed of by way of this common judgment.

1.1.The appellants/A3, A1 & A2 in C.C.No.255 of 2015 on the file of the learned Principal Special Judge for EC & NDPS Act Cases, Madurai, have filed these appeals, challenging the following conviction and sentence imposed against them on 26.05.2023, under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(1) of the NDPS Act:

<i>Crl.A. (MD).No.</i>	<i>C.C.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Sentence</i>	<i>Fine amount with default sentence</i>
483 of 2023	C.C.No.255 of 2015	Accused No.3	8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act	10 years of Rigorous Imprisonment	Rs.1,00,000/- each, in default to undergo 6 months of Simple Imprisonment
489 of 2023	C.C.No.255 of 2015	Accused No.1	8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act	10 years of Rigorous Imprisonment	Rs.1,00,000/- each, in default to undergo 6 months of Simple Imprisonment
495 of 2023	C.C.No.255 of 2015	Accused No.2	8(c) r/w 20(b)(ii)(C), 25, 29(1) of NDPS Act	10 years of Rigorous Imprisonment	Rs.1,00,000/- each, in default to undergo 6 months of Simple Imprisonment



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2.The brief facts of the case as follows:

On 06.06.2015, at 06.15 am, P.W.3/Inspector of police, NIBCID, Madurai, received the secret information about the illegal transportation of Ganja by the appellants in a vehicle. P.W.3 reduced the same in writing under Ex.P.1 and submitted the same to his Superior Officer/Deputy Superintendent of Police, Dindigul. The Superior Officer/Deputy Superintendent of Police, Dindigul, permitted her to proceed further in this case. Hence, P.W.3 along with her team members reached the place at Othakadai Junction on Trichy to Madurai Bye-Pass Road, at about 07.45 a.m and when they were on surveillance at 08.45 am, the informant identified the Maruti Suzuki Swift Dzire Tour Diesel BS IV vehicle which was passing by bearing Reg.No.TN-59-BF-0295 and left from the place of occurrence. Thereafter, P.W.3 and her team intercepted the vehicle with the appellants and introduced themselves as police officers and they were informed of their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the



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NDPS Act. The appellants consented to conduct the search by the officer herself and hence, P.W.3 conducted search and found 3 white colour plastic sacks in the boot of the car, 1 white colour plastic sack in the back side seat and 2 white colour plastic sacks under the seat. They opened the sacks and found each sack contained 20 kg of ganja and the total contraband was 120 kg. Thereafter, they recovered the contraband after following the procedure and took 12 samples of (each 50 grams) S1 to S12 from each sack and properly sealed the same. Thereafter, she arrested the appellants. The appellants also gave confession and the same were recorded. After that, P.W.3 handed over the accused along with contraband to P.W.4 and also submitted a detailed report under Section 57 of NDPS Act to him along with contraband P.W.1 registered the FIR in Crime No.100 of 2015 for the offence under Section 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act and produced the accused along with the contraband before the Judicial Magistrate. After completing all the formalities, the learned Judicial Magistrate remanded the appellants. Thereafter,



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P.W.4 conducted the investigation and filed the final report before the learned Principal Special Judge for EC & NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.255 of 2015. 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 trial.

3. The prosecution, to prove the case examined P.W.1 to P.W.4 and exhibited 13 documents as Ex.P.1 to Ex.P.13 and produced 4 material objects as M.O.1 to M.O.4. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the increminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the defence, no one was examined as witness and only one document was marked.



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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), 25 and 29(1) of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 6 months Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act.

5. The learned trial Judge, on considering the oral and documentary evidences, convicted and sentenced the appellants for the offence as stated supra. Aggrieved over the same, the appellants have preferred these appeals.

6. The learned counsel for the appellants submitted that in this case, the requirements under Section 42 of the NDPS Act had not been complied with. Ex.P.11 is the document produced by the prosecution to prove the requirements under Section 42 of the Act. According to P.W.3, he informed to the Deputy Superintendent of



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Police, Dindigul. The learned counsel further submitted that the secret information should have been reduced in writing and entry should have been made in the General Diary. But, the same was not done in this case.

7. Submission of learned counsel for the appellants:

7.1. He further submitted that Ex.P.2 is in printed form, which was used by the department to show the compliance under Section 42 of the Act. The said prescribed form cannot be used to comply the requirement under Section 42 of the Act. As per the law laid down by the Hon'ble Supreme Court in the case of *Karnail Singh Vs. State of Haryana* reported in (2009) 8 SCC 539, strict compliance of Section 42 of the NDPS Act, is necessary.

7.2. He further submitted that Ex.P.11 also not satisfy with the requirements under Section 42 of the Act. In Ex.P.11, there is no endorsement of receipt of the said information by the immediate



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superior. Therefore, there is no compliance under Section 42 of the Act.

7.3. He further submitted that the requirements under Section 57 of the Act were also not complied with. According to him, a report should be filed within the time stipulated under Section 57 of the Act. But, the same was not sent to the immediate superior in time. The concerned immediate superior also was not examined on the side of the prosecution to prove the compliance under Sections 57 and 42 of the Act.

7.4. He further submitted that in athachi, Ex.P.6, the weight of the sample taken is mentioned as 25 grams. But, in the Requisition Letter for R.F.S.L under Ex.P.1, it was mentioned as 50 grams. Therefore, there is doubt over the recovery of contraband.



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7.5. He further submitted that there was 12 days of delay in sending the sample to the Regional Forensic Laboratory (F.S.L) and the same creates doubt over the recovery of contraband.

7.6. He further submitted that there was no mentioning about the percentage of the cannabis in the Chemical Analysis Report, which was marked as Ex.P.3.

7.7. He also submitted that as per Section 52A of the NDPS Act, all narcotic drugs and psychotropic substances should have been disposed of. To prove the compliance under Section 52A of the NDPS Act, no document was produced before this Court and hence, he seeks acquittal.

7.8. He further submitted that in this case, the owner of the vehicle was not arrayed as an accused and also another person, who supplied the said contraband to the accused also was not arrayed as



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an accused.

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7.9. He further submitted that the seizure itself is illegal. The conviction on the basis of the illegal search is not legally maintainable. P.W.3 only deposed about information sent to the Immediate Superior namely, the Deputy Superintendent of Police, Dindigul, and she has not deposed about the reducing the information in writing.

7.10. With the above submissions, the learned counsel also relied upon the following judgments of the Hon'ble Supreme Court and prayed to allow the appeals by setting aside the conviction and sentence passed by the learned trial Judge:-

*i) Valsala Vs. State of Kerala reported in
AIR 1994 SC 117*

*ii) State of Himachal Pradesh Vs. Hans Raj
in Crl.A.No.233 of 2013-B*



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iii) Roland Markas Goonthar Vs. State of Rajasthan reported in 1988 WLN UC 453

iv) State Vs. Shanthi Devi in Cr.A.No.495 of 2023

v) Sukndev Singh Vs. State of Haryana in Crl.A.No.2118 of 2008

vi) Boota Singh & Others Vs. State of Haryana in Crl.A.No.421 of 2021

vii) Yusuf @ Asif Vs. State reported in 2023 INSC 912 (Crl.A.No.3191 of 2023)

viii) Mohammed Khalid and Another Vs. The State of Telangana reported in 2024 INSC 158 (Crl.A.No.1610 of 2023)

ix) Narcotics Control Bureau Vs. Saad Ansari & Another in Crl.A.No.695 of 2024

x) State of Himachal Pradesh Vs. Hans Raj reported in 2013:HHC:6926-DB

8. Submission of Learned Additional Public Prosecutor

8.1. The learned Additional Public Prosecutor submitted that as per the judgment in the *Karnail Singh case*, when the



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information was received about the illegal transportation and possession of the contraband, the officer, who had received the information should reduce the same in writing in the General Diary and send the same to the Immediate Superior. P.W.3 clearly deposed about the said compliance. Therefore, the requirements under Section 42 of the NDPS Act, is properly complied with.

8.2. He further submitted that non examination of the Immediate Superior is not a ground to disbelieve the evidence of P.W.3. More particularly, she prepared a report under Section 57 of the Act and also reduced the information in writing. The evidence of P.W.3 is that she passed on the information through phone. In the cross examination, nothing was elicited to disbelieve the above said version. The evidence, of informing the Immediate Superior was not challenged during the course of cross examination. Therefore, he argued that the requirement under Section 42 of the Act has been complied with.



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8.3. He further submitted that the samples were taken from each sack is 50 grams. P.W.3 clearly deposed about the taking of 50 grams of contraband and the same also is found in the report prepared under Section 57 of the Act, FIR and other relevant documents. There is some inadvertent mistake in Ex.P.6, attatchi about the weight of the sample. The same is not material when all the documents, including the Chemical Analysis Report clearly speak that the weight of the sample is 50 grams.

8.4. He further submitted that in this case, all the accused were found in illegal possession of 120 kg of ganja with 6 bags. The bags were recovered in the different parts of the car namely, boot, driver seat and back seat of the car. In the said circumstances, the non-examination of owner of the vehicle and the distributor/supplier of the contraband, is immaterial.



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8.5. He further submitted that in this case, the entire contraband seized was separately packed and were in the proper custody of the police. The same were produced before the Court at the time of trial and also marked as MO.2 and the same was identified by P.W.2 and P.W.3. The same was also deposed by P.W.3. When P.W.2 and P.W.3 deposed about the remaining contraband and identified the same before the Court, the prosecution has not moved for disposal of contraband under Section 52A of the NDPS Act and such a step was not necessary.

8.6. He further submitted that Section 57 of the NDPS Act is duly complied with and the said report was not only sent to the Immediate Superior but also produced at the time of remand.

8.7. He further submitted that the heavy reliance of the learned counsel for the appellants based on Ex.D.1, certified copy of Secret Information that a printed form was used for recording



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information under Section 42 of the Act, is concerned, the only requirements is to reduce the information in writing and inform the same to the Superior Officer. In this case, it was properly done.

8.8. The argument of the learned counsel for the appellants that the seizure itself is illegal and hence, the conviction is liable to be set aside is not legally correct as per the law laid down by the Hon'ble Supreme Court that even if the seizure is illegal but if the evidence corroborate the recovery of contraband on the basis of the undisputed evidence, that can not be a ground to disbelieve the recovery witness. Hence, he prayed for dismissal of the appeals by confirming the conviction and sentence imposed by the learned trial Judge.

9. This Court considered the rival submissions and perused the entire records and impugned judgment and precedents relied upon by either side.



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10.Discussion on the compliance under Section 42 of the

NDPS Act:

10.1. The main contention raised by the learned counsel for the appellant is that there is total non-compliance of Section 42 of the NDPS Act, 1985. The Learned Trial Judge erroneously held that section 42 is not applicable to the present case as against the prosecution case that the searching officer received secret information and made entry in the case diary and reduced it in writing and informed to the superior and proceeded to the occurrence place and recovered the contraband and arrested the accused. The learned trial judge's finding that section 43 is applicable to the present case on the ground that contraband was seized from the custody of the accused in the vehicle used by the accused in the public place during the transit and hence there was no requirement of compliance under section 42 is perverse.



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10.2.The learned trial 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 would vitiate the trial 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.

10.3. It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble Supreme Court in *Kallu Khan Vs. The State of Rajasthan* reported in 2021 INSC 873. has held that the search was made in the vehicle in the public place during the transit and therefore, Section 43 of the Act alone is attracted and necessity to comply with the requirement under Section 42 will not arise.



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10.4. But, 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 Constitution Bench 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 *Kallu Khan Vs. The State of Rajasthan* is contrary to the dictum of the larger bench and observation of the Kallu Khan Vs. The State of Rajasthan, 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) S.K.Raju Alias Abdul Haque Alias Jagga Vs. State of West Bengal

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

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

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

xi) Darshan Singh Vs, State of Haryana reported in 2016



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(14) SCC 358

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10.5. 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 in which 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.

10.6. 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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10.7. Section 42 of the Act following Section 41 of the Act mandates 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.

10.8. As per the Section 42 of the Act, if the 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 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:-



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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 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)



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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 action, or non-sending of a copy of such information to the official



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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."

10.9. From the above, it is clear that once 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 and the above guidelines.



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10.10. From the reading of Section 43 of the Act, it is clear that when the officers while on patrol duty, by chance make a recovery they need not comply with the requirement of Section 42 of the Act. Sections 42 and 43 of the Act are incorporated in the Act to meet out different situations. Section 43 of the Act authorises the 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 are not acting on the basis of the earlier information. But, in the case of the Section 42, the searching officers act 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



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

10.11. By applying the above principles, it is the duty of this court to test the finding of the learned trial judge whether section 43 is applicable to the present case and the prosecution proved the compliance of the section 42 of NDPS Act. The Learned trial judge only on the ground that the recovery was made during transit has held that section 43 is applicable which is not correct. The prosecution itself has accepted the application of section 42 of NDPS



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Act. The contraband was recovered from the car driven by the accused on the highways and the same was intercepted on the basis of the secret information received as per the section 42 of NDPS Act. Section 43 as discussed above by Hon'ble Supreme Court is applicable only when the officers by chance make the recovery while on patrol duty. In this case, PW 3 received the secret information and proceeded further on the basis of the said secret information and recovery also made from the car on the disclosure of the accused. Therefore the finding of the learned Trial judge that section 43 is applicable on the reasoning that the recovery was made in the public place during transit is perverse and this court holds that section 42 is applicable to the case as rightly argued by the learned counsel of the appellants. Now remaining question which has to be addressed is whether the mandatory requirement of section 42 is complied with or not.



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10.12. P.W.3, received the secret information on 06.06.2015 at 06.15 a.m. She made an entry and reduced the same in writing and also informed to the Immediate Superior namely, the Deputy Superintendent of Police, Dindigul. Ex.P.11 was produced to prove the compliance under Section 42 of the Act apart from the evidence of P.W.3. The conjoint reading of the evidence of P.W.3 and Ex.P.11, would show that the requirements of Section 42 of the Act is complied with. P.W.3 clearly deposed that after receiving the secret information, she made an entry in the General Diary and informed to the Deputy Superintendent of Police, Dindigul namely, the Immediate Superior and went to the spot and thereafter Ex.P.11 was produced before the Court along with the accused at the time of the remand. Hence, the argument of the learned counsel for the appellants that there was no compliance under Section 42 of the Act, cannot be accepted.



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11. Discussion on noncompliance of 52 A NDPS Act:

11.1. The learned counsel for the appellants submitted that there is no compliance of 52(A) of the NDPS Act. In this case, all the recovered contraband apart from the samples taken from the each bag were sent to the Court along with the accused at the time of remand. The learned Judicial Magistrate perused the same and directed to produce the same before the said Special Court. Before the Special Court during the course of trial, the remaining contraband was marked as MO.2 and the samples were also marked. P.W.2 and P.W.3 clearly deposed about the recovered contraband and identified before the Court. In similar contention raised before this Court in some other case this court made a detailed discussion and held that noncompliance of the section 52A of NDPS Act is not a circumstance to disbelieve the prosecution case of recovery of contraband and there is no impediment to convict the appellants. Now the Hon'ble Supreme Court clearly laid down the law on this aspect in the following two cases:



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Narcotics Control Bureau v. Kashif, reported in 2024 (11)

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SCC 372 (Para 41, 42, 46, 47, 50.4)

41. From the above decisions, the position that emerges is that this Court in a catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of FSL reports, etc. Even otherwise, in view of the law laid down by the Constitution Benches in Pooran Mal [Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345 : (1974) 93 ITR 505] and in Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] , any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper



manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the officer concerned authorised in making application to the Magistrate as contemplated under Section 52-A of the Act.

42. Significantly, the authorised officer can make the application under sub-section (2) of Section 52-A for three purposes – (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such Magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction “OR” made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision much less its non-compliance fatal to the case of prosecution.



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46. At this stage, we must deal with the recent judgments in Simarnjit Singh v. State of Punjab [Simarnjit Singh v. State of Punjab, (2024) 14 SCC 222 : 2023 SCC OnLine SC 906] , in Yusuf v. State [Yusuf v. State, (2024) 14 SCC 217 : 2023 SCC OnLine SC 1328] , and in Mohd. Khalid v. State of Telangana [Mohd. Khalid v. State of Telangana, (2024) 5 SCC 393 : (2024) 2 SCC (Cri) 650] in which the convictions have been set aside by this Court on finding non-compliance with Section 52-A and relying upon the observations made in Mohanlal [Union of India v. Mohanlal, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864] . Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52-A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act.

47. Therefore, we have considered the legislative history of Section 52-A and other statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or non-compliance with Section 52-A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in Pooran



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Mal [Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345 : (1974) 93 ITR 505] and Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] must take precedence over any observations made in the judgments made by the Benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.

50.4. Sub-section (2) of Section 52-A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

In the case of ***Bharat Aambale v. State of Chhattisgarh*** reported in **2025 SCC online SC 110 in paragraph 50** reads as follows:

50. *We summarize our final conclusion as under: –*

(I) *Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as*



it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the [NDPS Act](#).

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the [NDPS Act](#), irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section [52A](#) of the [NDPS Act](#) is only intended to



guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(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 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](#).

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be



drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section [52A](#) of the [NDPS Act](#) or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section [54](#) of the [NDPS Act](#), unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(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.



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12. In this case, the prosecution clearly proved the entire recovery of contraband from the accused, and the same was also produced before the Court. The appellants had not shown any prejudice because of non-compliance under Section 52A of the Act. In the absence of such plea, the non-compliance vitiated the trial cannot be accepted. By applying the above principles, the argument of the learned counsel for the appellants that the appellants are entitled to acquittal on the account of non-compliance under Section 52(a) of the Act, deserves to be rejected.

13.Discussion on delay in sending samples to forensic lab:

13.1. The learned counsel for the appellants submitted that there was a delay in sending the samples to Chemical Lab. The Hon'ble Supreme Court, repeatedly held that the delay in sending the samples to the Forensic Science Laboratory (FSL) is not a ground to disbelieve the recovery. More particularly in this case the evidence of P.W.2 and P.W.3 clearly and cogently established the recovery.



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Moreover, at the time of receiving the samples, 'seals were intact' and hence, there was no tampering of seals. The Hon'ble Supreme Court in the judgment of **Hardip Singh V. State of Punjab**, reported in (2008) 8 SCC 557 has held that delay in producing the contraband and samples are not material when the samples are produced with seal intact. The relevant paragraphs are as follows:

"it was of No consequence, for the fact of the recovery of the said sample from the possession of the appellant had been proved and established by cogent and reliable evidence and that apart, it had also come in evidence that til the date of parcels samples, were received by the chemical examiner, the seal put on that parcel was intact..... The plea that there was 40 days delay was immaterial and would not dent of prosecution case."

13.2. State of Rajasthan Vs. Sahiram reported in 2019 10

SCC 649, it is held as follows:

"If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept



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intact, that the report of the forensic experts shows the potency nature and quality of the contraband material and that based on such material the essential ingredients constituting an offence are made out."

Therefore, the contention of the learned counsel for the appellants that the delay in sending the samples vitiated the trial can not be accepted.

14.Discrepancy about weight in Ex.P6 and other documents:

14.1. The further argument of the learned counsel for the appellants that on the basis of the inadvertent writing in Ex.P.6, athatchi about 25 grams of sample is concerned, this Court perused the entire records of the case and evidence. P.W.2 & P.W.3 clearly deposed that 50 grams sample was taken from each bag. In the FIR and in the report under Section 57 of the Act, it was clearly mentioned as 50 grams. In all the contemporaneous documents except Ex.P.6, athtchi, there is a clear mention of 50 grams. The said



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mistake on the part of P.W.2 at the time of seizure is not a ground to disbelieve the evidence of P.W.2 & P.W.3 about the recovery of the contraband. The other documentary evidence clearly refers 50 grams of ganja. In the said circumstances, the above argument of the learned counsel for the appellants deserves to be rejected.

15. Noncompliance of section 57:

15.1. The contention of the learned counsel for the appellant that the requirement under Section 57 of the Act is not complied with is concerned, this Court perused the report under Section 57 of the Act, which was marked as Ex.P.13 and also the evidence of P.W.3. P.W.3 clearly deposed about the submission of the said report to the Immediate Superior and the same reached the Court at the time of the remand itself. The same was addressed to the Deputy Superintendent of Police, Dindigul. Therefore, this Court comes to the conclusion that there was a strict compliance under Section 57 of the Act and there was no infirmity in Ex.P.13. Even if there was any



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infraction of Section 57 of the Act, it is not a ground to acquit the appellants as per the law laid down by the Hon'ble Supreme Court. Therefore, the contention of the learned counsel for the appellants that the requirement under Section 57 of the Act is not complied with, cannot be accepted.

15.2. The further contention of the learned counsel for the appellants that the vehicle owner and the supplier of the contraband are not arrayed as accused is concerned, as rightly argued by the learned Additional Public Prosecutor when the appellants were found in possession of a huge quantity of contraband i.e., 120 kg, there may be some lapse on the part of the investigating agency to enquire about the vehicle owner, and the supplier of the contraband and hence, the same is immaterial. Admittedly, the possession itself is an offence and the appellants were found in possession of huge quantity of ganja. Therefore, the said contention is not accepted.



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16. Discussion on the illegality of seizure:

16.1. The Hon'ble Constitution Benches in *Pooran Mal* [*Pooran Mal v. Director of Inspection (Investigation)*, (1974) 1 SCC 345 : (1974) 93 ITR 505] and in *Baldev Singh* [*State of Punjab v. Baldev Singh*, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] have held that, any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. Therefore further argument of the learned counsel for the appellants that the seizure itself is illegal and hence, the conviction is liable to be rejected cannot be accepted. In this case, as already discussed the evidence of P.W.2 & P.W.3 are cogent and convincing about the recovery of contraband from the possession of the appellants in the car. When their evidence is cogent and trustworthy, this Court finds no material to disbelieve their evidence and there was no infirmity in their evidence and hence, the prosecution clearly proved the case against the appellants. Further, due to the belated examination of the witnesses, some immaterial contradiction and omission would have



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occurred and the same is not a ground to disbelieve the evidence of P.W.1 to P.W.3 when their evidence materially corroborated with each other relating to the recovery of the contraband from the appellants. In view of the above, this Court finds no merit in these appeals.

17. Discussion on the Precentage of Cannabinoid in the

Recovered Ganja:

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. The said contention was heard by this Court in detail on 27.06.2025 and the same 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'.



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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 “கதிரகஞடன் வழிய சிறிய இலைகள்” and the said description denotes flowering tops and he seeks time to address the issue in detail.

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.”



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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.

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



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learned Additional Public Prosecutor submitted that the recovered ganja with leaves, seeds, 'ffph;fs;' 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.”

18. This Court has perused the cross-examination with regard to Section 57 report and the chemical analysis report. It is true that, in the chemical analysis report, there is no specific mention of



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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 is of humongous weight of 120 Kg.

19. 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 ie., 120kgs, this Court is not inclined to accept the contention that the case falls below the commercial quantity.

19.1. The argument made by the learned counsel for the



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appellants that there was no mentioning of the percentage of “THC” in the Chemical Analysis Report marked under Ex.P.3, is deserved to be rejected for the reason that, percentage of THC is insignificant in the present case of the recovery of 120 Kgs Ganja i.e. Nearly six times of the commercial quantity. Hence, the presence of cannabinoid would justify the conviction under section 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act. Therefore, this Court finds no merit in the appeal.

20. Accordingly, these Criminal Appeals are dismissed and the conviction and sentence passed by the learned Principal Special Judge for EC & NDPS Act Cases, Madurai, in C.C.No.255 of 2015 dated 26.05.2023, is hereby confirmed. Consequently, the connected miscellaneous petitions are closed.

15.10.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
dss/sbn



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WEB COPY To:

- 1.The I Additional District Judge for NDPS Act Cases at Madurai,
- 2.The Inspector of Police,
NIB-CID, 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/sbn

CrI.A.(MD).Nos.483, 489 & 495 of 2023
and
CrI.MP(MD)No.9190, 9247 & 9483 of 2023

15.10.2025