



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	12.09.2025
Pronounced On	:	15.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.472 of 2023
and
CrI.MP(MD)No.9059 of 2023

Eswaran

... Appellant/ Accused No.2

Vs.

The State rep by its,
Inspector of Police,
Melur Police Station,
Madurai City.

(In Crime No.2236 of 2020)

... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records in C.C.No.296 of 2021, dated 21.04.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, and set aside the judgement of the conviction on the appellant/accused.

For Appellants : Mr.M.Chandra Sekaran
for Mr.A.Balaji

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



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JUDGMENT

The appellant/A2 in C.C.No.296 of 2021 on the file of I Additional Special Court for NDPS Act Cases, Madurai, has filed this appeal, challenging the judgment of conviction and sentence imposed against him on 21.04.2023, whereby, he was convicted for the offence under Sections 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act for the alleged illegal possession and transportation of 102 kg of ganja.

2.1. The brief facts of the case is as follows:

When P.W.2 was working as Sub-Inspector of Police, Melur Police Station, MADURAI, on 30.12.2020, at 06.45 pm, he received a secret information through telephone from his informant about the illegal transportation of ganja in the Toyota Car bearing Reg.No.TN-09-CS-5062 near Katthapatti Melur Taluk, Madurai District. He recorded the said information in the General Diary and reduced it in writing under Ex.P.9 and informed the same to his Immediate Superior. Thereafter, P.W.2 and other police officers went to the spot with necessary equipment and were on surveillance. At



that time, at 07.55 p.m, P.W.2 found the said car coming and the informant identified the accused and the car and thereafter, left the place of occurrence. They intercepted the vehicle and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct search by the officer himself and hence, P.W.2 conducted a search and found the presence of 102 kg of ganja in the back seat of the car and made weighment of entire contraband and took the sample of S1 and S2 and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the appellant. The appellant also gave a confession and the same was recorded by P.W.2. P.W.2 brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.2236 of 2020 for the offence under Sections 8(c) r/w 20(b)(ii) (C), 25 and 29(1) of the NDPS Act and prepared a detailed report under Section 57 of NDPS Act. Following the same, P.W.2 handed over the custody of the accused to P.W.3 along with the contraband, sample and report under Section 57 of the Act. P.W.3 produced the



accused before the learned Judicial Magistrate along with the recovered contraband and samples taken from the said contraband and made a request to remand him. After completing all the formalities, the learned Judicial Magistrate remanded the appellant in judicial custody. Thereafter, P.W.3 conducted the investigation and filed the final report before the I Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.296 of 2021.

2.2. 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.

2.3. The prosecution, to prove the case examined P.W.1 to P.W.3 and exhibited 18 documents as Ex.P.1 to Ex.P.18 and produced 5 material objects as M.O.1 to M.O.5. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating 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



accused. On the side of the defence, no one was examined as witness and no document was marked.

2.4. The learned trial Judge after considering the oral and documentary evidence, convicted the appellants for the offence under Sections 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 12 months Rigorous Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

3. Challenging the said conviction and sentence imposed by the learned trial Judge, present appeal has been filed.

4. The learned counsel for the appellant made the following submissions :-

4.1. According to P.W.2, he received the secret information through telephone on 30.12.2020 at 18.45 hours. The same was reduced in writing under Ex.P.9 and he immediately sent the same to P.W.3. This Court perused the evidence of P.W.3. P.W.3 also affirmed



the request made by P.W.2 and on receipt of information, he acknowledged the same and granted permission to conduct search and submit a report before the learned Judicial Magistrate as per law.

4.2. The learned trial Judge has committed error in holding that compliance under Section 42 of the Act has no application to the present case. According to the prosecution, P.W.2 received the secret information through telephone communication and the same was recorded under Ex.P.9 and sent the same to the immediate superior. The immediate superior also gave permission to conduct raid and thereafter, they proceeded towards the occurrence place. But, the learned trial Judge has held that Section 42 of the Act has no application to the present case. Therefore, there was no compliance of Section 42 of the Act. Hence, he seeks acquittal for the appellant. He strongly relied the judgment of 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.

4.3. There were inconsistencies and the material contradictions between P.W.1 and P.W.2's evidence relating to the recovery of



contraband. Therefore, benefit of doubt has to be given to the appellant.

4.4. In Ex.P.9 there is no mentioning about the name of the appellant. Then how P.W.2 found out the appellant and conducted search in the car was not properly explained. Hence, benefit of doubt has to be given to the accused.

4.5. The owner of the vehicle filed an application before the trial Court and got the vehicle back. In the said circumstances, the conviction under Section 25 of the Act without adding the owner of the vehicle is not legally maintainable.

4.6. The appellant has no knowledge about the transportation of ganja found in the car.

4.7. There is huge delay of 36 days in producing the contraband before the Special Court and there was no proper explanation for the said delay. There was no evidence for the safe custody of the said contraband.

4.8. Apart from that the occurrence took place on 30.12.2020. The sample was sent to the Forensic Scientific Laboratory only on 08.10.2021. The said inordinate delay was not properly explained.



4.9. There was no evidence adduced to show the appellant's presence in the car on the date of occurrence.

4.10. Regarding receipt of information and sending the same to the higher official, there was no cogent evidence available on record.

4.11. The requirements under Section 57 of the Act was not properly complied with and the report under Section 57 of the Act was not sent to the superior immediately. Hence, he prayed to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.

5.Submissions made by the learned Additional Public Prosecutor :-

5.1. P.W.2 and P.W.3 clearly deposed about the compliance of Section 42 of the Act and to prove the same, document under Ex.P.9 also was marked. As per Ex.P.9, the information was reduced in writing and the same was submitted to P.W.3 and he acknowledged the same and also made an endorsement. Therefore, the submission of the learned counsel for the appellant that there was no compliance under Section 42 of the Act is not correct.



5.2. The delay in producing the contraband before the Special Court is immaterial when the entire contraband was produced before the learned Judicial Magistrate along with the accused at the time of remand itself. The learned Judicial magistrate also properly verified and directed the police officials to produce the same before the Special Court. In this case, huge quantity of contraband was seized and the same was produced before the Special Court. At the time of production, it was properly sealed and it was intact. Further, there was no questioning about the tampering of seal during the examination.

5.3. The delay in sending the sample to the Forensic Scientific Laboratory is immaterial, when the seal was intact and there was no tampering of seal.

5.4. It is true that the learned trial Judge, passed the conviction on the appellant under Section 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act and failed to pass minimum sentence under Section 25 of the Act. This Court has power under Section 382 of Cr.P.C. on the



basis of the finding of the learned trial Judge that Section 25 of the Act was made out. Acquittal under Section 29(1) of the NDPS Act is not a ground to set aside the conviction under Sections 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act based on the evidence.

5.5. The vehicle was received by the owner is not a ground to acquit the appellant under Section 25 of the Act. Further, 8(c) r/w 20(b)(ii)(C) of the NDPS Act is an independent offence. Once they were found in the car possession of the contraband, they are liable to be convicted.

5.6. In this case, the searching officer P.W.1 and P.W.2 cogently deposed about the recovery of the contraband from the car from the custody of A1 and the appellant. There was no explanation on the side of the appellant for the seizure of the contraband on the date of the contraband. The car is a private car and he drove the said car on the date of the occurrence. In view of the said circumstances, the prosecution clearly proved the case against the appellant.

6. This Court considered the rival submissions and perused the



records available on record and also the precedents relied upon by them.

7. The only question that arises for consideration in this appeal is that *whether the conviction and sentence imposed against the appellant under Section 8(c) r/w 20(b)(ii)(c) and 25 of the NDPS Act for the possession of 102 kg of ganja is legally maintainable?*

8. Discussion on delay in sending sample:-

8.1. The contraband was recovered on 30.12.2020. The sample was taken on 30.12.2020 and the same was produced before the learned Judicial Magistrate on 08.02.2021. The sample was sent to the lab on 18.02.2021. In the sample report, it is specifically stated that seal was intact. Therefore, the argument of the learned counsel for the appellant to disbelieve the recovery on the account of the delay in producing the contraband before the FSL cannot be accepted and the same was fortified by following paragraph of the the judgment of the Hon'ble Supreme Court:-

8.2. *Hardip Singh Vs. State of Punjab* reported in (2008) SCC



“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.”

8.3. *State of Rajasthan Vs. Sahiram* reported in 2019 10 SCC 649

“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 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.”

9. Discussion on the finding of the learned trial Judge that Section 42 of the Act is not applicable to the present case :-

9.1. As per Section 42 of the Act, empowered officer who has



received the secret information about the illegal possession, transportation of narcotic drugs or psychotropic substance or controlled substance, he 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:-

“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



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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) 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



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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 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.

9.2. In this case, on 30.12.2020, at 06.45 pm, P.W.2 received the secret information about the illegal transportation and possession of the contraband, and he reduced the same in writing. He reported the said information to his Immediate Superior. Immediate Superior also



acknowledged the same. To prove the same, the prosecution produced Ex.P.9. From the perusal of Ex.P.9 and appreciation of evidence of P.W.2 and P.W.1, 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. In some cases, the said Immediate Superiors also are not examined. In all cases, there is some material discrepancy between the evidence of the Immediate Superior and the searching officer relating to the compliance of Section 42 of the Act. This Court finds no material discrepancies which would affect the evidence of the witness P.W.2 and P.W.1 in this aspect. When the document Ex.P.9 was 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' which has not affected the prosecution case of receipt of information are not a ground 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 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 requirement of procedure under Section 42 of the Act, on the basis of the evidence of P.W.2 and P.W.1 and Ex.P.9. Even though the learned counsel for the appellant entertained a suspicion about Ex.P.9 on the ground that the same was produced belatedly, this Court is not inclined to accept the same without any material to show that the same was concocted when the evidence of P.W.1, P.W.2 and other contemporaneous document containing the signature of the appellant more particularly, Ex.P.7 at the relevant point of recovery i.e., 30.12.2020 at 23.10 hours are clear. This Court is unable to accept the case of the learned counsel for the appellants that there is some suspicion regarding Ex.P.9. Therefore, Section 42 of the Act is strictly complied with. Therefore, this Court is not inclined to accept the argument of learned counsel for the appellants that the prosecution has not complied with the requirement of Section 42 of the Act.

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

A vehement argument was made by the learned counsel for the appellant with regard to the ownership of the vehicle, it is not



necessary to prove the ownership of the vehicle to record a conviction under 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985. The prosecution proved the conscious possession of the contraband by the appellants in the vehicle and the same has been fortified by the decision of the Hon'ble Supreme Court in the case of *Rizwan Khan Vs. State of Chattisgarh* which reads 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 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".

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10.1. In view of the above, prosecution need not establish ownership of the vehicle. Once prosecution proved the appellant's conscious possession of the contraband in the vehicle in which he had travelled, the conviction under section 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985, can be maintained.

11. Sentence under section 25 of NDPS Act:

11.1. The learned trial Judge convicted the appellant under Section 25 of the Act. But, no sentence was imposed against him. This Court perused the evidence on record to pass conviction and sentence for the offence under Section 25 of the Act. P.W.2 and P.W.1 clearly deposed about the interception of the vehicle and presence of A1 and A2 in the car. In the car, the contraband was recovered. In the said circumstances, the car was in the custody of the appellant and other accused/A1 along with the huge quantity of 102 kg of ganja. Therefore, Section 25 of the Act is applicable to the present case. It is not necessary to record the conviction, when the car belonged to the owner of the accused. If they found the contraband in the car, the

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presumption under Sections 54 and 35 of NDPS Act comes. To record conviction under Section 25 of the Act, it is necessary that the accused should be having control over the vehicle but it is not necessary that he must be a owner of the vehicle. Therefore, the charge framed against the appellant under Section 25 of the Act is legally correct and the same was also proved through the cogent and trustworthy evidence of P.W.1 and P.W.2. There is no explanation on the side of the appellant/A2 relating to the huge quantity of contraband in the car. Therefore, the conviction under Section 25 of the Act is legally maintainable. In view of the evidence available to convict the appellants under section 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985, acquittal under section 29 of the NDPS Act has no bearing in confirming the finding of the learned trial judge under section 8(c) r/w 20(b)(ii)(C), 25 of the NDPS Act 1985. Therefore the contention of the counsel for appellant that the conviction under section 8(c) r/w 20(b)(ii)(C), 25 of the NDPS Act 1985 is not legally maintainable after acquitting under section 29 of NDPS Act cannot be accepted and the same deservers to be rejected and accordingly rejected.



11.2. As rightly argued by the learned Additional Public Prosecutor, this Court has power to give minimum sentence for the offence under Section 25 of the Act. Minimum sentence as per the act is concerned, 10 years of Rigorous Imprisonment and fine of Rs. 1,00,000/-. Therefore, this Court inclines to give minimum sentence under Section 25 of the NDPS Act, apart from the award of sentence for the offence under Section 8(c) r/w 20(b)(ii)(C) of the Act.

12. The learned counsel for the appellants made the detailed submission that the recovered contraband was without flowering tops. 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 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 102 kg of ganja which is a huge



commercial quantity.

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13. Further, there is no evidence on record from the side of the accused to show that if the contraband was separated from the leaves or other parts the weight will be 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.

14. Accordingly, the appellant is sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only) in default to undergo 12 month Simple Imprisonment under Section 25 of the NDPS Act and both the sentence shall run concurrently.

15. In view of the above discussion, this Court finds no merit in the appeal. The prosecution clearly proved the joint possession of the huge quantity of ganja in the custody of the appellant and A1 in the car and the same was clearly proved through the cogent and



trustworthy evidence of P.W.1 and P.W.2 and the contemporaneous document namely, Ex.P.6 & Ex.P.7 and the secret information report under Ex.P.9 and also a detailed report under Ex.P.14 & Ex.P.15. The Chemical Analysis Report also revealed that the recovered contraband contained cannabis and the remaining contraband was also marked as MO.3 without any objection. In view of the above, this Court finds no merit in this appeal.

16. Accordingly, this Criminal Appeal is dismissed and conviction and sentence passed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.296 of 2021, dated 21.04.2023, is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

15.10.2025.

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

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

2.Inspector of Police,
Melur Police Station,

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Madurai City.

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.

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