



Crl.A.(MD).No.488 of 2023

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).No.488 of 2023

and

Crl.M.P.(MD).No.9245 of 2023

Deivendran

... Appellant / Accused No.1

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
Theni – NIBCID Police Station,
Theni District.
(Crime No.163 of 2016)

... Respondent / Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records in C.C.No.95 of 2017 dated 28.04.2023 on the file of the learned Principal Special Court for NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.B.Viswanathan

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



Crl.A.(MD).No.488 of 2023

JUDGEMENT

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The accused No.1 in C.C.No.95 of 2017 on the file of the learned Principal Special Court for NDPS Act Cases, Madurai, has filed this appeal, challenging the following conviction and sentence imposed against him on 28.04.2023, under Sections 8(c) r/w 20(b)(ii)(C), 25 of the NDPS Act 1985:

<i>Offence under Section</i>	<i>Punishment</i>
8(c) r/w 20(b)(ii)(C), 25 of the NDPS Act 1985	Undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo 6 months of simple imprisonment

2.On 04.10.2016 at about 10.00 a.m., P.W.2 received secret information regarding the illegal transportation of a large quantity of ganja in a lorry. She recorded the information in the General Diary, reduced it into writing as Ex.P4, and informed the higher officer, P.W.3. Thereafter, she proceeded to the place of occurrence, namely, Cumbum to Cumbum Mettu Road near Elumbu Godown, and kept surveillance on the movement of the vehicle. The informer identified the vehicle bearing Registration No. TN-20-AC-1703, which was then intercepted. It was found that two persons, viz., the driver and another occupant were inside the vehicle.



Crl.A.(MD).No.488 of 2023

2.1. After complying with the mandate of Section 50 of the NDPS

Act, a search of the vehicle was conducted, which led to the recovery of 16 bags of ganja, each weighing 20 kilograms and two bags of ganja each weighing 22 Kgs. Samples were taken from each bag, and both the samples and the remaining ganja were sealed. The accused were arrested and taken to the police station, where a case in Crime No. 163 of 2016 was registered. They were subsequently remanded to judicial custody along with the recovered contraband and other material documents, including the *aththatchi*.

2.2. Thereafter, P.W.2 submitted a report to the immediate superior under Section 57 of the NDPS Act. The immediate superior, P.W.3, continued the investigation, obtained the chemical analysis report, and, after verifying the ownership of the lorry and other material particulars, filed the final report under Sections 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act, before the Principal Special Court for NDPS Act Cases, Madurai, and the same has been taken on file in C.C.95 of 2017. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 of Cr.P.C., and framed the necessary charges and questioned the accused. All the accused



Crl.A.(MD).No.488 of 2023

pleaded not guilty and stood trial.

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2.3.The prosecution to prove the case have examined P.W.1 to P.W. 3 and exhibited 12 documents as Ex.P1 to Ex.P12 and produced 55 material objects as P.M.O.1 to P.M.O.55. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating material 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 appellant. On the side of the appellant, no witness was examined and no document was marked.

2.4.The learned trial Judge after considering the oral and documentary evidence, convicted the accused under Section 8(c) r/w 20(b)(ii)(C) and 25 of the NDPS Act, 1985 and sentenced him to undergo 10 years of Rigorous imprisonment and to pay a fine of Rs.1,00,000/- each, in default to undergo 6 months of Simple Imprisonment each. Aggrieved over the same, the appellant has preferred this Criminal Appeal before this Court.



Crl.A.(MD).No.488 of 2023

and fruiting tops of the ganja, and therefore the substance seized would not fall within the statutory definition of 'ganja'. On these grounds, the learned counsel sought the acquittal of the appellant.

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

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

3.5.There was no examination of the independent witnesses.

3.6.The trial Court failed to consider the factual contradictions and the discrepancies regarding the compliance of Section 42 of the NDPS Act, 1985 preparation of seizure mahazar and the place of occurrence.

3.7. Further, with regard to the vehicle, which was used by the accused person, the ownership of the vehicle has not been established.



Crl.A.(MD).No.488 of 2023

The real owner of the vehicle was not at all identified. Therefore, the trial Court did not frame the charge for the offence under Section 25 of the NPDS Act, 1985, whereas the trial Court believed the prosecution theory that the appellant had driven the vehicle, which was not at all supported with the documentary evidence. How the vehicle came into the possession of accused person was not at all explained; it remains unanswered. Therefore, he seeks for acquittal.

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

4.1. P.W.2 has clearly deposed about receiving the information from the informer, recording it in the General Diary, reducing it into writing under Ex.P4, and informing P.W.3. P.W.3 has also clearly deposed about acknowledging the receipt of the said information from P.W.2. Their evidence is cogent and trustworthy, and there is no circumstance established to disbelieve Ex.P4. Hence, the learned Trial Judge rightly convicted the appellant, holding that there was compliance with Section 42 of the NDPS Act.



Crl.A.(MD).No.488 of 2023

4.2. The learned Additional Public Prosecutor submitted that the recovery was effected from the lorry and, therefore, Section 50 of the Act would have no application. Even otherwise, the evidence of P.W.2 and P.W.1 clearly establishes compliance with Section 50. In the case of ***State of H.P. v. Pawan Kumar***, reported in ***(2005) 4 SCC 350***, in the case of ***State of Punjab v. Baldev Singh***, reported in ***(1999) 6 SCC 172*** and in the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat***, reported in ***(2011) 1 SCC 609***. It has held that in cases where the contraband is recovered from a vehicle, Section 50 does not apply. Even otherwise, the oral intimation regarding the right under Section 50 is duly proved, and hence, there was compliance with Section 50.

4.3. As regards the delay in producing the contraband, it was contended that the delay is immaterial since both the contraband and the samples were sealed and remained intact. The learned Additional Public Prosecutor further submitted that, to convict an accused under Section 25 of the NDPS Act, proof of ownership of the vehicle is not necessary, and that possession of the vehicle is sufficient to attract Section 25.

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



Crl.A.(MD).No.488 of 2023

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

6.The question in this case is whether the prosecution has established the case beyond reasonable doubt against the appellants and the conviction and sentence imposed against the appellant is sustainable or not?

7. Discussion on compliance under Section 42 of the NDPS

Act:-

7.1. P.W.2 clearly deposed that, at about 10.00 a.m. on 04.10.2016, she received information from her informer, recorded the same in the General Diary, reduced it into writing, and submitted it to P.W.3. P.W.3 also deposed that he acknowledged the receipt of the said information and the relevant document, Ex.P4 was marked in this regard. In Ex.P4, there is a clear reference about the sending of the information by P.W.2 and the acknowledgment of the same by P.W.4. Both witnesses were subjected to lengthy cross-examination, and nothing was elicited to



Crl.A.(MD).No.488 of 2023

discredit their evidence regarding compliance with Section 42 of the NDPS Act. Therefore, this Court holds that the prosecution has clearly proved strict compliance of Section 42.

7.2. The learned counsel for the appellant would submit that the prosecution case itself is that the searching officer received the secret information and they did the search, recovery and arrest. 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 is erroneous 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*.

7.3. It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble three Judge Bench of the Hon'ble Supreme Court in *SK.Raju Alias Abdul Haque Alias Jagga Vs, State of West Bengal* reported in *(2018) 9 SCC 708* has held that the search was made in the public place and therefore, Section 43 of the Act alone is attracted



Crl.A.(MD).No.488 of 2023

and necessity to comply with the requirement under Section 42 will not arise.

7.4.The learned counsel for the appellant would submit that the Hon'ble Supreme Court in the ***S.K.Raju case*** on facts has held that Section 43 of the Act alone is applicable. In the ***S.K.Raju case***, even though information was received prior to the search and recovery of contraband from the accused, the information received was '*when he was walking along the Picnic Garden Road in front of Falguni Club*', and according to the Hon'ble Supreme Court, it was not a building, conveyance or enclosed place. Further according to the Hon'ble Supreme Court, the said recovery was made in the public place, which was accessible to the public and fell within the ambit of the phrase of the public place in the explanation to Section 43 of the Act. Therefore, the Hon'ble Supreme Court has held that Section 42 of the Act had no application. Further, according to the learned counsel for the appellant, the Hon'ble Constitution Bench judgment '***Karnail Singh***' was not placed. Therefore, the learned counsel for the appellant by relying the Hon'ble Constitution Bench judgment of Supreme Court in ***Dr.Shah Faesal and Others Vs. Union of India and Another Court*** reported in

Page 11/27



Crl.A.(MD).No.488 of 2023

2020 4 SCC 1 would submit that the ratio decidendi in ***S.K.Raju case*** is contrary to the dictum of larger bench and the same is not binding or otherwise the observation of the ***S.K.Raju case*** in para 12 of the judgment reported in **2018 9 SCC 708** is only obiter dictum and therefore, he would submit that the non-compliance of Section 42 of the Act would vitiate the entire proceedings. Therefore, he seeks for acquittal. He also fairly placed the following judgments of the Hon'ble Supreme Court decided for and against him.

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

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

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



Crl.A.(MD).No.488 of 2023

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 (14)

SCC 358

7.5. 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 by 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.

7.6. 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



Crl.A.(MD).No.488 of 2023

substance.

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7.7. 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.

7.8. 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:-

35. In conclusion, what is to be noticed is



Crl.A.(MD).No.488 of 2023

that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajjan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the



requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating 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



Crl.A.(MD).No.488 of 2023

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.”

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

7.10. From the reading of Section 43 of the Act, it is clear that when the officers by chance make a recovery while on patrol duty, they need not comply the requirement of Section 42 of the Act. Sections 42 and 43 of the Act are incorporated in the Act to meet out 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



Crl.A.(MD).No.488 of 2023

warrant in the case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc. They had not acted on the basis of the earlier information. But, in the case of the Section 42, the searching officers acted on the basis of the receipt of the earlier information about the illegal possession, transportation, concealment of the contraband. In short, Section 43 of the Act, is to meet the situation of chance recovery. Therefore, legislature has made clear about terms of the Sections 42 and 43 of the Act. The Hon'ble Constitution Bench also reiterated the said requirement of Section 42 in the case of ***Karnail Singh***. Therefore, the finding of the learned trial Judge that Section 43 is applicable to the present case is not correct. But, this Court by exercising its power under Section 386 Cr.P.C., makes an effort to consider the plea of the learned counsel for the appellant whether there is mandatory requirement of the compliance of Section 42 of the Act, on the basis of the available evidence in this case.

8.Discussion on compliance under Section 50 of the NDPS Act:

The Hon'ble Supreme Court in the case of ***State of H.P. v. Pawan Kumar***, reported in ***(2005) 4 SCC 350***, in the case of ***State of Punjab v.***



Crl.A.(MD).No.488 of 2023

Baldev Singh, reported in ***(1999) 6 SCC 172*** and in the case of ***Vijaysinh***

Chandubha Jadeja v. State of Gujarat, reported in ***(2011) 1 SCC 609***

has held that in the case of recovery of contraband effected from vehicle, Section 50 of the Act, would have no application and also held that the compliance under Section 50 may be either oral or in writing. In this case, from Ex.P1 and the evidence of P.W.1 and P.W.2, it is evident that the contraband was recovered from the lorry. Further, P.W.1 and P.W.2 have clearly deposed that they informed the accused about his right to be searched in the presence of a learned Judicial Magistrate or a Gazetted Officer. Such oral communication has been held to constitute sufficient compliance. Therefore, the argument advanced by the learned counsel regarding the necessity to comply with Section 50 of the NDPS Act is misconceived. Therefore, the contention that there was no compliance with Section 50 deserves to be rejected.

9.Delay in producing the contraband:

9.1. The learned counsel for the appellant submitted that the delay in producing the contraband before the Special Court is fatal to the prosecution. It is true that there was a delay of **9** days in producing the contraband before the Special Court. However, this delay is not material

Page 19/27



Crl.A.(MD).No.488 of 2023

in the present case, as the contraband was initially produced on **04.10.2016** before the learned Judicial Magistrate, along with the accused, at the time of remand. All the contraband had been duly sealed in bags and were later produced before the Special Court.

9.2. Once the material was produced before the learned Judicial Magistrate and its identity was affirmed, this Court is unable to accept the contention of the learned counsel for the appellants regarding the delay. In similar circumstances, the Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379***, held that delay in producing seized contraband before the Court may be a ground to doubt the prosecution case only where the seizure itself is doubtful. In the present case, as discussed above, the seizure of the contraband has been proved beyond all reasonable doubt, and no specific reason has been attributed against P.W.4 for registering a false case against the accused persons. The learned Trial Judge has therefore rightly held that the delay of 9 days in this case is not a material circumstance to disbelieve the evidence of recovery witness.



Crl.A.(MD).No.488 of 2023

10. The learned counsel for the appellant 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.

11. This Court has perused the cross-examination with regard to the Section 57 report and the chemical analysis report. It is true that, in the chemical analysis report, there is no specific mention of the flowering and fruiting tops. However, the report clearly discloses the presence of cannabinoids. Even if the ganja was recovered along with leaves, seeds, and stems, as suggested by the learned counsel for the appellants, weighing the flowering tops, fruiting parts, and other materials separately would not make any material difference, since the recovered contraband weighs more than 20 kg, ie., 364kgs which is well above the commercial quantity enumerated under the NDPS Act.

12. 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



Crl.A.(MD).No.488 of 2023

if the weight of the recovered contraband was between 20 kg and 25 kg the argument of the learned counsel for the appellant can be considered.

In the present case, as the recovered contraband weighs more than 25 kg, 364 kgs this Court is not inclined to accept the contention that the case falls below the commercial quantity.

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

13.1. Though vehement argument was made raised by the learned counsel for the appellant with regard to the ownership of the vehicle, the Hon'ble Supreme Court in the case of ***Rizwan Khan Vs. State of Chhattisgarh*** it has observed 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



Crl.A.(MD).No.488 of 2023

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".

13.2. In view of the above, it is clear that the respondent need not establish ownership of the vehicle and the ownership of the vehicle itself is not going to be determined, what is to be determined by the Court is whether material is ganja within a definition of [Section 3](#) of the NDPS Act and what is the quantity of ganja which has been seized.

14.Conclusion:-

14.1. From the evidence of P.W.2, it is apparent that he received secret information and the said secret information received was duly reduced in writing and forwarded to the immediate Superior and on his instruction i.e., "Received and take action as per law", the team has



Crl.A.(MD).No.488 of 2023

Court. Thus, the question is answered against the appellant and this Court finds no merits in the appeal. Therefore, the appeal deserves to be dismissed.

15. In the result,

(i) The Criminal Appeal is dismissed and the judgment passed by the learned Principal Special Court for NDPS Act Cases, Madurai in C.C.No.95 of 2017 dated 28.04.2023 is hereby confirmed.

(ii) The bail bond executed by the appellant is hereby cancelled.

Consequently, the connected miscellaneous petition stands dismissed.

15.10.2025

NCC : Yes/No
Index : Yes/No
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Crl.A.(MD).No.488 of 2023

K.K.RAMAKRISHNAN, J.

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Pre-delivery order made in
Crl.A.(MD).No.488 of 2023

15.10.2025