



Crl.A.(MD).Nos.344 of 2020 & 99 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	12.09.2025
Pronounced On	:	15.10.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.344 of 2020 and 99 of 2021

Crl.A(MD)No.344 of 2020:

Gopi

.. Appellant /Accused No.1

Vs.

The State of Tamil Nadu,
represented by
The Deputy Superintendent of Police,
NIB CID,
Dindigul
(Crime No.45 of 2018)

.. Respondent / Complainant

PRAYER: Criminal Appeal has been filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.264 of 2018, on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the judgment dated 29.09.2020.

For Appellant : Mr.M.Jagadeesh Pandian

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



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Crl.A(MD)No.99 of 2021:

P.Rajkumar

.. Appellant/Accused No.2

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
NIB-CID,
Dindigul
(Crime No.45 of 2018)

.. Respondent /Complainant

PRAYER: Criminal Appeal has been filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.264 of 2018, on the file of the I Additional Special Court for NDPS Act Cases, Madurai and set aside the judgment dated 29.09.2020.

For Appellant : Mr.P.Balasubramanian

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

COMMON JUDGEMENT

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



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2.The appellants are said to have committed the offence under

Sections 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') r/w Section 34 of IPC for the alleged possession of 240 kg of Ganja. The I Additional Special Court for NDPS Act Cases, Madurai convicted the appellants in Spl.C.C.No.264 of 2018 under Sections **8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 r/w 34 of IPC** by its judgment dated 29.09.2020 and sentenced **them to undergo 10 years Rigorous Imprisonment** and pay a **fine of Rs.1,00,000/- each**, in **default to undergo 1 year Rigorous Imprisonment each**. Challenging the same, the appellants have filed these criminal appeals. The conviction and sentence are as follows:

<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>
344 of 2020	264 of 2018	Accused No-1	8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 r/w 34 of IPC	10 years Rigorous Imprisonment	Rs.1,00,000/- in default to undergo 1 year Rigorous Imprisonment
99 of 2021	264 of 2018	Accused No-2	8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 r/w 34 of IPC	10 years Rigorous Imprisonment	Rs1,00,000/- in default to undergo 1 year Rigorous Imprisonment



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

follows:

According to the prosecution, the appellants have conspired together and illegally transported Ganja in a Mahendra Jeep bearing registration No.AP-30-A-2616. On 25.03.2018, the Insepctor of Police/P.W.2 attached to the respondent unit received a secret information from the informant at about 10.00 am., and the same was reduced into writing in the Genral Diary/Ex.P6 and forwarded to the superior officer/P.W.3 and after obtaining necessary permission, she proceeded with her team to the occurrence place after complying the procedure under Section 42 of the NDPS Act. When P.W.2 and her team reached the occurrence place in Government Jeep bearing registration No.TN-22-G-294 at 02.00 pm., a Mahindra Jeep bearing registration No.AP-30-A-2616 heading from East to West direction was identified by the informant. The said Jeep was stopped by the police team and P.W.2 and her team introduced themselves to the appellants, who are the occupants of the said vehicle and about the information received by police. P.W.2 after complying the procedures under Section 50 of the NDPS Act 1985 by obtaining their consent letters under Ex.P1 and Ex.P2, made a search



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of the vehicle and found 8 white color gunny bags with ganja weighing about 30 kgs each totally 240 Kilograms of Ganja. The confession statement given by A1 was recorded by P.W.2. Thereafter, two samples of 50 grams each were taken, totally 16 samples were separately collected in a polythene cover and wrapped up with kakki color paper. The said samples were marked as S1 to S16 and remaining contraband of 29.900 kgs of each bag and the said Mahindra jeep bearing registration No.AP-30-A-2616 were seized under Seizure Mahazar Ex.P3 in the presence of official witnesses P.W.1 and Head constable Raja. Thereafter, accused Nos.1 and 2 were arrested and brought to the station and he registered the FIR/Ex.P7 in Crime No.45 of 2018 for the offences under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 r/w Section 34 of IPC and submitted a detailed report to P.W.3/Deputy Superintendent of Police under Section 57 of the NDPS Act. Thereafter, P.W.2 completed the investigation and filed the final report before the Special Court. The learned trial Judge had taken cognizance of the case in C.C.No.264 of 2018.

3.1.After appearance of the accused Nos.1 and 2, copies of records were furnished to them under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being



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satisfied that there existed a *prima facie* case against the accused/appellants, framed necessary charges under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act 1985 r/w Section 34 of IPC and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood trial.

3.2.The prosecution, in order to prove its case, examined 3 witnesses as P.W.1 to P.W.3 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 26 material objects as M.O.1 to M.O.26.

3.3.When the accused were examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against them, they denied the evidence as false and further stated that a false case was foisted against them. On the side of the defence D.W.1 was examined.

4.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.264 of 2018 were guilty and passed the conviction and sentence against the appellant as stated above.

The same has been challenged by the appellants by filing these appeals
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5.5.The trial Court failed to consider the factual contradictions and the discrepancies regarding the compliance of Section 42 of the NDPS Act, 1985, preparation of seizure mahazar and the place of occurrence.

5.6.Further, the respondent, failed to establish the ownership of the vehicle; from which the contraband was seized. 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 appellants had driven the vehicle, which was not at all supported by any documentary evidence. How the vehicle came into the possession of accused persons was not at all explained; and it remains unanswered.

5.7.The learned counsel for the appellants further submitted that according to Ex.P9 (form 91), the recovered contraband was not at all produced before the learned Judicial Magistrate, and form 91 alone has been submitted before the learned Judicial Magistrate, who in turn directed the respondent to produce the same along with the property. There was an endorsement to that effect. Whereas the contraband was



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produced before the learned Special Court only on 03.04.2018. Further,

Form 91 does not contain the signatures of accused, witnesses and P.W.2.

5.8. There is no corroboration between the evidence of prosecution witnesses and there are lot of contradictions. To substantiate the above submissions, they relied upon the following precedent:

In the case of *Karnan Thakka Babu vs. State* reported in *2013 (2) MWN (Cr) 184*, therefore, he seeks for acquittal.

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

6.1. Recovery was made in the Jeep and hence Section 50 of the NDPS Act is not applicable and he placed reliance on various judgments of the Hon'ble Supreme Court.

6.2. P.W.2 received secret information and she duly communicated the same to PW3, obtained permission and conducted the raid, arrested the accused and recovered the contraband and produced the same before PW3 on the date of the occurrence itself along with report and the same

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was proved through the Exs.P1, P2, P3, P6 and P7. Therefore, there is strict compliance of Sections 42, 52, 55 & 57 of the NDPS Act,1985.

Hence, the submissions of the learned counsel for the appellants have to be rejected.

6.3.PW.2 produced the arrested accused along with the recovered contraband and samples under Form 91 on date of occurrence itself before the learned Judicial Magistrate and the learned Judicial Magistrate verified the same and remanded the accused and directed to produce the contraband before the Special Court. In the said circumstance, delayed production before the Special Court has not affected the prosecution case regarding the recovery of contraband on the basis of the cogent and trustworthy evidence of PW.2 and official witnesses.

6.4. When the evidence of PW.2, PW.3 and official witnesses are cogent and trustworthy, non examination of the independent witnesses does not affect the recovery and arrest of the accused and he relied on the various judgments of the Hon'ble Supreme Court.



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6.5.The appellants never took the plea of Section 52A of the NDPS Act before the trial Court and the prosecution took the samples at the occurrence place, packed and sealed them and the remaining contraband was also packed and sealed and all were produced before the trial Court and marked as material objects. Therefore, precedents relied on by the learned counsel for the appellants are misconceived.

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

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

8.The questions to be decided in these appeals are *whether the prosecution proved the case against the appellants for the charge under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985, r/w Section 34 of the IPC beyond reasonable doubt? and whether the judgment of the*



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Court below is sustainable?

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

9.1. The main contention raised by the learned counsel for the appellants 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 officer and proceeded to the occurrence place and recovered the contraband and arrested the accused. The learned trial judge's finding that only section 43 is applicable to the present case on the ground that contraband was seized from the custody of the accused in Mahendira Jeep bearing Registration No.AP30A 2616 used by the accused in the public place during the transit and there was no requirement of compliance of Section 42 is perverse.

9.2 The learned trial Judge is not correct in holding that Section 42 of the Act, is not applicable without considering the plea of the accused



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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***.

9.3.It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble Supreme Court in ***Directorate of Revenue Vs. Mohamed Nisar Holia*** reported in ***2008(2) SCC (Cri) Page 370*** 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.

9.4 But, according to the learned counsel for the appellants, 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*** reported in ***(2020) 4 SCC 1*** would submit that the ratio decidendi in ***Directorate of Revenue Vs. Mohamed Nisar Holia*** is contrary to the decision of larger bench and the observation in the ***Directorate of Revenue Vs. Mmohamed Nisar***



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Holia 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

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

9.6. 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.

9.7. 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



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Section 42 of the Act either to arrest or search the person and recover the contraband is to safeguard the constitutional right envisaged in the constitution of India for the reason that the same can be made without obtaining the warrant from the Court.

9.8.As per the Section 42 of the Act, if 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 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:



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(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



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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 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



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*position got strengthened with the amendment to
Section 42 by Act 9 of 2001.”*

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

9.10.From the reading of Section 43 of the Act, it is clear that when the officers by chance while on patrol duty make a recovery they need not comply the requirement of Section 42 of the Act. Sections 42 and 43 of the Act are incorporated in the Act to meet out the different situations. Section 43 of the Act 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 case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc., as they had not acted on the basis of earlier information. But, in the case of Section 42, the searching officers acted



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on the basis of the receipt of earlier information about the illegal possession, transportation, concealment of the contraband. In short, Section 43 of the Act, is to meet the emergent situation of chance recovery. Therefore, legislature has made clear about terms of the Sections 42 and 43 of the Act. The Hon'ble Constitution Bench also reiterated the said requirement of Section 42 in the case of Karnail Singh. Therefore, the finding of the learned trial Judge that Section 43 is applicable to the present case is not correct. But, this Court by exercising its power under Section 386 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, was followed on the basis of the available evidence in this case.

9.11.By applying the above principles, it is the duty of this court to test the finding of the learned trial judge that whether section 43 is applicable to the facts of the present case. The Learned trial judge only on the ground that the recovery was made while it was in transit and held that section 43 is applicable which is not correct. The prosecution itself has admitted the application of section 42 of NDPS Act. The contraband was recovered from the jeep driven by the accused on the highways upon



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interception of the said vehicle on the basis of the secret information received as per the section 42 of NDPS Act. Section 43 as discussed above by the Hon'ble Supreme Court is applicable only when the officers by chance made the recovery while on patrol duty. In this case, PW 2 received the secret information and proceeded further on the basis of the said secret information and recovery was also made from the jeep on disclosure by 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 while it was in transit is perverse and this court holds that section 42 is applicable in this case as rightly argued by the learned counsel for the appellants. Now the remaining question which has to be addressed is whether the mandatory requirement of section 42 of the NDPS Act is complied with or not.

9.12 In this case, P.W.2 received the secret information about the illegal possession and transportation of the contraband, and she reduced the same in writing. She reported the said information to his Immediate Superior. The Immediate Superior also acknowledged the same. To prove the same, the prosecution produced Ex.P.6 From the perusal of Ex.P.6 and appreciation of evidence of P.W.3, this Court finds the compliance of



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mandatory requirements of Section 42 of the Act. The learned counsel for the appellant heavily relied on the discrepancies relating to the recording of information and reducing in writing and reporting the said information reduced in writing to his superior officer, to disbelieve the case of the prosecution about the compliance of the procedure stated in Section 42 of the Act. The learned counsel for the appellant also submitted that the Immediate Superior officer who is said to have received the information has not deposed about the receipt of the information from the searching officer. Even in some cases, said Immediate Superiors also are not examined. In all cases, there is some 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 of P.W.2 & the official witnesses in this aspect. When the document Ex.P6 is produced and marked without objection and the same was proved through the examination of author of the document and the signature of the officer found in the document is not disputed and the same reached the Court within a reasonable time, then 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



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the Act. When the Immediate Superior officer comes into the box and deposes about the receipt of the information, there is no further requirement to prove 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 grounds to disbelieve the compliance. Further, the Hon'ble Supreme Court reiterated the principle that unless the discrepancies go to the root of the prosecution version, the same is not a ground to disbelieve the testimony of the witness. Apart from that, most of the witnesses are the police officers and examination is conducted after a lapse of several months and we cannot expect them to keep everything vivid in their memory. Each witness would depose in his own way on his perception of the occurrence. One may say 'a' the other may say 'A'. Therefore, sitting in the armchair, this Court cannot expect the witness to depose before the Court with photographic memory. Therefore, this Court finds that the prosecution clearly established the strict compliance of Section 42 of the Act, procedure on the basis of the evidence of P.W.2, P.W.3 and the official witnesses and Ex.P.6. Therefore, this Court is not inclined to accept the argument of learned counsel for the appellant that the prosecution has not complied with the requirement



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of Section 42 of the Act.

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10. Delay in producing the contraband:

The learned counsel for the appellants submitted that the delay in producing the contraband before the Special Court is fatal to the prosecution. In this case, P.W.2 produced the entire contraband and samples under Form 91 on the date of occurrence itself before the learned Judicial Magistrate. The learned Judicial Magistrate verified the same and directed to produce before the Special Court. P.W.3 produced the same before the Special Court with some delay. The said delay is immaterial when the contraband and the samples were produced before the Special Court with seal. It is not the case of the appellants that the seal was tampered. In the said circumstances, the said delay is not fatal. 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:

“17. The then Station House Officer, Inspector Baldev Singh, who was examined as PW 1, was posted at Police Station Ajnala on the date of



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occurrence. He received the said samples of opium along with case material, being produced before him by PW 5. It has come on evidence that Inspector Baldev Singh kept the entire case property with him till it was deposited in the office of the Chemical Examiner, Amritsar on 30-9-1997 through ASI Surinder Singh (PW 3). It has also come on evidence that till the date the parcels of sample were received by the chemical examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from the possession of the appellant. In that view of the matter, delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant. The aforesaid contention, therefore, also stands rejected.

20. In Ouseph v. State of Kerala [(2004) 10 SCC 647 : 2005 SCC (Cri) 595] it was held by this Court that under the provisions of Section 55 of the Act, the requirement may not be mandatory. However, in that case, in view of peculiar facts of the case and as the contraband articles were kept in totally unsealed condition for near about two months it was held that the same creates doubt.”



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

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Though 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 pass the conviction under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985, r/w Section 34 of the IPC. The prosecution proved the conscious possession of the contraband of 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*** where it has been 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 the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be



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

12. Compliance of Section 50 of the NDPS Act:-

The learned counsel for the appellants made a lengthy submission that P.W.2 and his team conducted search of the body and vehicle and hence, mandatory requirement of obtaining individual written consent letters have to be obtained to make search in the presence of the learned Magistrate or the Gazetted Officer. In this case, separate written consent letters were served and hence, there was no violation of Section 50 of the NDPS Act.

12.1. When P.W.2 received information about the transportation and possession of huge quantity of Ganja in the vehicle and **recovered the same from the vehicle**, this Court has no hesitation to hold that Section 50 of the NDPS Act is not applicable. In said circumstance, any

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alleged infirmities in obtaining consent as envisaged under Section 50 of the NDPS Act does not affect the prosecution case of recovery when the evidence of prosecution is otherwise cogent and trustworthy.

13. Discussion on non-compliance of 52A of NDPS Act:

13.1 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 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.1 and P.W.2 clearly deposed about the recovered contraband and identified before the Court. A similar contention was raised before this Court in some other case and 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 said contraband and there is no impediment to convict the said appellants in the case of *Mareeswaran Vs. the Inspector*



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of Police reported in **2023 (2) L.W. Crl. 893**. Now the Hon'ble Supreme

Court clearly laid down the law on this aspect in the following two cases:

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



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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.

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



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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 noncompliance 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 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



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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** para 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



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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



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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 noncompliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i)



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there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (i) 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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14. In this case, the prosecution clearly proved the entire recovery of contraband from the accused, and the same was also produced before the Court. When the appellants could not establish that such non-compliance under Section 52A of the Act, has vitiated the trial then such plea 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 account of non-compliance under Section 52(A) of the Act, deserves to be rejected.

15. Non-examination of the independent witnesses:

The learned counsel for appellants submitted that the occurrence place was a busy public place in Dindigul. Therefore, non-examination of the independent witnesses creates doubt over the recovery. The said submission cannot be accepted for the simple reason that it is the specific



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case of the P.W.2 that she requested independent persons to witness the recovery but they refused. According to the prosecution, two accused were caught by the police and in the said tensed scenario, it is common that no independent witnesses would come forward to witness the recovery. Apart from that the Hon'ble Constitution Bench of the Supreme Court in the case of ***Mukesh Singh vs. State*** reported in **2020 (10) SCC 120** has laid down the principles that the non-examination of the independent witnesses is not a ground to disbelieve the evidence of the police witnesses when their evidence is cogent and trustworthy without any infirmity. In this case, this Court does not find any infirmity in the material portion of the evidence of all the witnesses, namely, P.W. 2, P.W.3 and other official witnesses relating to the recovery of the contraband.

16. 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. In this regard, this Court heard the arguments in details on 27.06.2025 and the same are extracted hereunder:-



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“ When the matter taken up for hearing on 06.06.2025, this

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Court passed the following order :-

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

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

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 'கத்திங்கள்' and therefore, the same includes flowering and fruiting tops. Hence, the learned Additional Public Prosecutor submitted that the recovered ganja with leaves, seeds, 'கத்திங்கள்' 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”.



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4. The learned counsel for the appellants also cited the judgment of 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.”

17. 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 cannabinoid. 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 nearly 240 kg which is whooping commercial quantity as per the NDPS Act.



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18. Further, there is no evidence on record from the side of

the accused to show that the contraband was separated from the leaves or other parts so as to bring its weight below the commercial quantity. Only if the weight of the recovered contraband was between 20 kg and 25 kg the argument of the learned counsel for the appellants could be considered. In the present case, as the recovered contraband weighs more than 25 kg, this Court is not inclined to accept the contention that the case falls below the commercial quantity.

19.Conclusion:-

From the evidence, it is apparent that P.W.2 received secret information and the said secret information received was duly reduced in writing and forwarded to the immediate Superior and on his instruction i.e., “Received and take action as per law”, the team has proceeded to the spot mentioned in the information and thereafter, search, seizure and arrest had been done. Samples were duly taken and packed with seals and the remaining contraband were duly packed separately. The said samples and the remaining contraband were produced before the learned Judicial Magistrate on the date of occurrence itself. The learned Judicial Magistrate verified the same. The recovered contraband of 240kgs of Ganja is more than the commercial quantity i.e., 20 Kg. The said samples

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were subjected to analysis and the Report confirmed the presence of “cannabinoid”.

19.1. The entire seized contraband namely recovered Ganja was produced before the Court and marked without any objection as M.O.1 to M.O.26. The prosecution witnesses viz., P.W.1, P.W.2 and PW.3, deposed before the Court in a cogent manner and their evidence is trustworthy and this Court finds no infirmities in their evidence either to disbelieve or discard the prosecution case that the appellants transported 240kgs of Ganja in mahendra Jeep and the same was in their conscious possession. The appellants neither said anything in their 313 Cr.P.C questioning nor produced any evidence to disprove the case of the prosecution in compliance with terms of Sections 54 and 35 of the NDPS Act. Therefore, the prosecution has clearly proved their case beyond reasonable doubt and the accused never dispelled the presumption as required under Section 35 of the NDPS Act and this Court does not find any infirmities in the judgment of the trial Court. Thus, the questions are answered against the appellants. Therefore, these appeals deserve to be dismissed.



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20. Accordingly, The Criminal Appeals are dismissed and the judgment passed by the learned I Additional Special Court for NDPS Act, cases, Madurai in C.C.No.264 of 2018 dated 29.09.2020 is hereby confirmed.

20.1 The bail bond executed by the appellants are hereby cancelled.

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

15.10.2025

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

To

- 1.The learned Special Judge,
I Additional Special Court for EC and NDPS Act cases, Madurai.
- 2.The Deputy Superintendent of Police,
NIB CID,
Dindigul.
- 3.The Additional Public Prosecutor,

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Madurai Bench of Madras High Court, Madurai.

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4. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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