



CrI.A.(MD).Nos.561, 613, 626 & 769 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	12.09.2025
Pronounced On	:	25.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).Nos.561, 613, 626 & 769 of 2023
and
CrI.M.P.(MD).Nos.3334 and 12374 of 2023

CrI.A.(MD).No.561 of 2023

Jayapal

... Appellant
/Accused No.4

Vs.

State rep by
The Inspector of Police,
Mathiciyam Police Station,
Madurai District
(Crime No.354 of 2021)

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.556 of 2021 dated 29.05.2023 on the file of the I Additional Special Court for NDPS Act, Cases, Madurai and set aside the same.



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CrI.A.(MD).Nos.561, 613, 626 & 769 of 2023

For appellant : Mr.R.Venkatesan

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

CrI.A.(MD).No.613 of 2023

Kannan @ Mokkalai Kannan

... Appellant
/Accused No.2

Vs.

State rep by
The Inspector of Police,
Mathiciyam Police Station,
Madurai District
(Crime No.354 of 2021)

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.556 of 2021 dated 29.05.2023 on the file of the I Additional Special Court for NDPS Act, Cases, Madurai and set aside the same.

For appellant : Mr.A.Jeyaram

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



CrI.A.(MD).Nos.561, 613, 626 & 769 of 2023

CrI.A.(MD).No.626 of 2023

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Saravanakumar @ Vazhaipazha Saravanakumar

... Appellant
/Accused No.1

Vs.

State rep by
The Inspector of Police,
Mathiciyam Police Station,
Madurai District
(Crime No.354 of 2021)

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.556 of 2021 dated 29.05.2023 on the file of the I Additional Special Court for NDPS Act, Cases, Madurai and set aside the same.

For appellant : Mr.J.Nanthakumar

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



Cr.L.A.(MD).Nos.561, 613, 626 & 769 of 2023

Cr.L.A.(MD).No.769 of 2023

Mukesh @ Mookkan

... Appellant
/Accused No.3

Vs.

State rep by
The Inspector of Police,
Mathiciyam Police Station,
Madurai District
(Crime No.354 of 2021)

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.556 of 2021 dated 29.05.2023 on the file of the I Additional Special Court for NDPS Act, Cases, Madurai and set aside the same.

For appellant : Mr.B.Sekar

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

COMMON JUDGMENT

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.



2.The appellants are said to have committed the offence under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') for the alleged possession of 22.500 kg of Ganja. The II Additional Special Court for NDPS Act Cases, Madurai convicted the appellants in C.C.No.556 of 2021 under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act by its judgment dated 29.05.2023 and sentenced them to undergo 10 years Rigorous Imprisonment and pay a fine of Rs. 1,00,000/- each, in default to undergo 12 months Simple Imprisonment each for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, the appellants filed these criminal appeals.

3.On 21.06.2021 at 08.00 am., P.W.2 received secret information through informer about the illegal possession of Ganja in a ramshackled building near Madhina Pallivasal Madurai Town Vaigai Vadakarai Road, and after recording the same in the diary, he informed to P.W.3 the immediate Superior and reached the occurrence place along with the informer and the informer identified five accused. P.W.2 and his team and after compliance of Section 50 of the NDPS Act, made personal search on the accused. A1 gave confession about the illegal possession of 22.500 kgms of Ganja and one of the accused slipped away from the scene of the occurrence. Thereafter, P.W.2 took the samples from recovered



contraband and properly sealed and also sealed the remaining contraband properly and he arrested accused A1 to A4 and brought them to the police station and registered the case in Crime No.354 of 2021 and submitted a report to P.W.3, P.W.3 remanded the accused along with the contraband and conducted investigation by examining witnesses and also collected the chemical analysis report and arrested A5 and filed final report before the Special Court.

3.1.The learned trial Judge after taking cognizance in C.C.No.556 of 2021, summoned the accused and served copies under Section 207 of Cr.P.C., and framed necessary charges and the accused denied the charges and claimed to be tried.

3.2.The prosecution, to prove the case examined P.W.1 to P.W.3 and marked Ex.P1 to Ex.P18 and produced M.O.1 to M.O.3. Thereafter, the learned trial Judge questioned the accused under Section 313(b) of Cr.P.C., by putting the incriminating materials against them and the accused denied the same as false. On the side of the defence Ex.D1 to Ex.D3 has been marked. Thereafter, P.W.3 was recalled and prosecution exhibits were marked and after the examination, the learned trial Judge considered the material and convicted A1 to A4 and acquitted A5 by the impugned judgment dated 29.05.2023. Challenging the same, the



accused filed separate appeals before this Court.

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4.The learned counsel for the Appellants would submit that there was no compliance of Section 42 of the Act. According to the prosecution, they produced Ex. P-8 to prove the compliance of Sections 42, but in Ex. P-8, there is no endorsement made by the immediate superior, P.W. 3. P.W. 3 also admitted that Ex. P-8 did not contain his signature. Therefore, there is no compliance of Section 42 of the Act, and hence, the appellants are entitled to acquittal. The learned trial judge, after noticing the said fact, has held that it does not affect the prosecution case and the learned judge has observed that in the report under Section 57 of the Act, there is a specific mention about the same. According to the learned counsel for the Appellant, the said finding is against the law laid down by the Hon'ble Supreme Court in the case of ***Kishan Chand v. State of Haryana***, reported in **(2013) 2 SCC 502**. The same was not followed by the learned Judge and hence he seeks for acquittal.

4.1.The learned counsel for the appellants further submitted that the evidence reveals that according to the prosecution, two accused were arrested and released on station bail, the previous day night to this occurrence date in



connection with their involvement in Crime No.354 of 2021 for alleged offence under Section 75 of the Tamil Nadu City Police Act and in the said circumstances, the evidence of P.W.2, that he did not know the accused, is not correct and hence there was inherent improbabilities in the evidence of P.W.1 and P.W.2. The learned judge also found that the evidence of P.W.1, that he did not know the accused, is false and he also directed departmental proceedings against the said officer. But the learned trial Judge recalled the witnesses after reserving the judgment, and marked the exhibits stating that the station bail was obtained and the same was not disclosed by the accused. Therefore he drew adverse inference against the accused. The said approach of the learned judge is not correct. The, learned counsel for the appellant would submit that, in the remand report it is stated that 24.200 kg Ganja, and in all prosecution documents, it is mentioned as 22.500 gram Ganja. The same creates doubt over the prosecution case.

4.2.The learned counsel further submitted that two set of accused were put together for the purpose of showing possession of the 22.500kgs of Ganja. According to the learned counsel for the appellant one of the accused is said to have committed offence under section 75 of the Tamil Nadu City Police Act, causing nuisance to the public on the previous day of the occurrence and he was



arrested and brought to the police station and released on station bail. The other accused, within a time of 44 or 45 minutes is said to have committed similar kind of nuisance and hence, case was registered under Section 75 of the Tamil Nadu City Police Act, and he was also brought to the police station and released on station bail. In the said circumstances, the defence of the accused, that they were arrested and they were kept in illegal custody and false case was registered was probable, and the same was not properly considered by the learned trial judge.

4.3.The learned counsel for the appellants also submitted that when five persons were found together and the police officer allowing the fifth person to escape from the scene of the occurrence, itself shows that there is falsity in the prosecution case.

4.4.The learned counsel for the appellants further submitted that the athachi prepared by the police did not contain the signature of the remaining accused, who were present at the scene of the occurrence after nabbing. This shows that the athatchi was prepared at the police station with the false allegation. The same was not also properly considered by the trial Judge.



4.5.The learned counsel for the appellants also submitted that in the defence document, there is a clear mentioning of the occurrence in crime number 354 of 2021, and the same was not properly explained by PW2. This court asked PW2 to give explanation for that and he filed an affidavit and has admitted that according to him, the said mistake was made inadvertently. Therefore, there is a suspicion over the recovery of the contraband.

4.6.The learned counsel also submitted that the respondent police had chosen the place of occurrence for registering the false case. In another case also, the respondent had fixed the same place to register the case and they produced the judgment of the said case to show that a similar recovery was made from by arresting different accused. The learned counsel for the appellant prayed to take judicial notice of this judgment and in order to find out the truth he also canvassed that there is conspicuous absence of flowering tops in the recovered Ganja.

4.7.The place of occurrence is according to the appellant to register the case under Section 75 of the Tamil Nadu City Police Act is east and west side of the place. They booked one accused under Section 75 of Tamilnadu City Police Act that he caused disturbance near the East side and another accused caused

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disturbance near the west side. They arrested two accused and without remanding the accused, they framed the false case. The learned counsel appearing for the appellant also submitted that injuries on the accused itself shows that they were kept in illegal custody and false complaint was made by planting the contraband. In this case, according to the prosecution, they brought Spring Balance (Vil Tharasu) to measure the contraband and such measurement could not have been made and hence the appellant was falsely implicated is probable.

4.8. The learned counsel also submitted that the recovered contraband is not Ganja. They also have put a suggestion to the witness that, recovered contraband was not Ganja and the same was not properly considered. There was a material contradiction about place of the occurrence between PW1 and PW3. Therefore, the same was not considered by the learned trial judge.

4.9.Ex.P16 and Ex.P18, were manipulated and the same was not properly considered by the learned trial judge. After the cross examination was over and after the defense document was marked and in order to defeat the defense document, the police officer was recalled to build up a story of arrest under Section 75 of the Tamilnadu City Police Act. Ex.P16 and Ex.P18 were produced



by recalling the witnesses after the judgment was reserved. Therefore, there is every possibility to fabricate Ex.P16 and Ex.P18, and the same was not properly considered by the learned trial judge. More particularly, in this case, the entire contraband was produced before the special court with a delay of three months and sent to chemical examination after three months from the date of the occurrence. Therefore, the learned counsel for the appellant seeks acquittal stating that the entire prosecution case was filled with full infirmities and improbabilities. Also, the learned counsel for the appellant submitted the signature in the Athatchi (Recovery Mahazar) did not tally with the signature of the appellant. Except A1, other appellant's signature are not found in the athatchi. Therefore, their presence in the scene of the occurrence is doubtful. Therefore, they seek to set aside the judgment of the learned trial Judge.

5.Submission of the learned Additional Public Prosecutor:

The learned additional public prosecutor on going through records and also impugned judgment would submit that the learned trial judge categorically held that the compliance of 42 was strictly followed and to prove the same Ex. P8 was produced. The learned judge also has incidentally held that section 42 was not applicable. Even otherwise, there is a strict compliance of section 42.



Therefore, he seeks to confirm the sentence and conviction.

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5.1.The learned Additional Public Prosecutor also would submit that there was no discrepancy between the quantity of the contraband. In the remand report, a mistake has been committed by the learned judicial magistrate relating to the quantum of the recovered contraband. And hence, there was no infirmity.

5.2.The learned Additional Public Prosecutor also submitted that the delay in producing the contraband before the Special court is not material, when the contraband was produced during the remand before the learned judicial Magistrate. Delay in producing the entire contraband before the special court is not a circumstance to disbelieve the case of recovery when the same was sealed properly and without any tampering of the seal. Delay in producing, sending the property to the chemical examiner is not a ground to dispute the evidence of the recovery. The special court has relied various decisions of the Hon'ble Supreme Court and hence, the said finding need not be interfered with P.W.1 and P.W.2 clearly deposed about the entire sequence of events coherently and cogently. The learned public prosecutor also submitted that some of the accused have previous cases to their credit and hence, he seeks to confirm the conviction and sentence.



6.This Court considered the rival submissions made by the learned counsel appearing for the learned counsel 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.

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

The learned counsel for the appellant would submit that the prosecution case itself is that the search 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*.

7.2.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 and necessity to comply with



the requirement under Section 42 will not arise.

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7.3.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 ***2020 4 SCC 1*** would submit that the ratio decidendi in ***S.K.Raju case*** is contrary to the 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** amounts 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 **2024(1)**



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xi) Darshan Singh Vs, State of Haryana reported in 2016 (14) SCC 358

7.4. Section 41(1) of the NDPS Act empowered the jurisdictional learned Judicial Magistrate to issue warrant for arrest of person or for the search of any building, conveyance or place to the search 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.

7.5. Section 41(2) of the Act empower the search 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.

7.6. 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.



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7.7.As per the Section 42 of the Act, when 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. 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 officer was not in the police station, but while he was on the move



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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



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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.”

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

7.9.From the reading of Section 43 of the Act, it is clear that when the officers by chance make search 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 authorised the empowered officer mentioned in Section 42 of the Act to search and seize the contraband in any public place namely, any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public or in transit, without warrant in the case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc., They had not acted on the basis of the earlier information. But, in the case of the Section 42, the search 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.

(i) The Hon'ble Constitution Bench of Supreme Court in the case of



Karnail Singh Vs. State of Haryana reported in 2009 (8) SCC 539 clearly laid down number of guidelines to follow the mandatory requirements of Section 42.

(ii) More particularly, in guideline “D” the Hon'ble Supreme Court has specifically stated that total non-compliance is impermissible and there must be satisfactory and acceptable explanation for the delayed compliance.

(iii) In this case, no material has been produced to arrive a finding of satisfactory explanation for the delayed compliance going through the following portion of the explanation PW.3:

“ கிடைத்த தகவல் தனித்தாளில் பதிவு செய்த நேரம் முதல் தகவல் அறிக்கையில் சொல்லப்படவில்லை என்றால் சரிதான். ஒப்படைக்கப்பட்ட தனித்தகவலில் என்னுடைய மேல் ஒப்பமோ என்னுடைய கையெழுத்தோ இல்லை என்றால் அசலில் இல்லை. நகலில் கையொப்பம் இட்டுள்ளேன். அது என்னுடைய வழக்கு கோப்பில் உள்ளது. நகலை நீதிமன்றத்திற்கு அனுப்பப்படவில்லை என்றால் சரிதான்.”

(iv) The Hon'ble Constitution Bench clearly issued direction to make entry in the “GD” about the secret information said to have been received and followed by reducing in to writing the said information and sending the written information to the immediate superior. In this case, there was no such compliance. To prove the compliance, Ex.P.8, was produced. In the Ex.P.8 no acknowledgment for receipt of information by PW.3 is found and the same was



also admitted by PW.3 as observed above. In this aspect, the Learned Trial Judge gave two findings namely mentioning in the 57 report about the passing of information to PW.3 amounts to compliance of Section 42 and Section 42 is not applicable to the facts of this case on the ground that the recovery was made in a ramshackled building. Therefore, the finding of the Learned Trial Judge that the provision of the section 42 is not applicable to the facts of the case is also not correct.

(v) Another finding of the Learned Trial Judge that there was a mentioning in the said section 57 report about compliance of Section 42 and the same amounts to compliance of Section 42 is against the law laid down by the Hon'ble Supreme Court in the case of ***Kishan Chand v. State of Haryana***, reported in **(2013) 2 SCC 502**

24..... The sending of report as required under Section 57 of the Act on 20-7-2000 will be no compliance, factually and/or in the eye of the law to the provisions of Section 42 of the Act. These are separate rights and protections available to an accused and their compliance has to be done in accordance with the provisions of Sections 42, 50 and 57 of the Act. They are neither interlinked nor interdependent so as to dispense compliance of one with the compliance of another. In fact, they operate in different fields and at different stages. That distinction has to be kept in mind by the courts while deciding such cases.

7.10. Even, no documentary evidence was produced to prove the case of PW.2 that he had informed through phone to PW.3. In the absence of the



acknowledgment of receipt of information of Ex.P.8 and the failure to produce any evidence to prove the case of the receipt of the information through the phone, only on the basis of the reference in the 57 report about the compliance of the Section 42 in view of the judgment of the Hon'ble Supreme Court above stated, this Court unable to concur with the finding of the Learned Trial Judge that there was a compliance of Section 42. In view of the above discussion this court finds that there is total non-compliance section 42 of the NDPS Act and hence accused is entitled to benefit of doubt.

8.Discussion on recovery:

According to the PW.2, he had received secret information about the illegal possession of the 22.500 Kg “Ganja” in a ramshackled building situated near the Mosque. The informer identified the said place. “There was no evidence that the informer identified the accused”. It is the specific evidence of PW.2 that he had never seen the accused prior to the occurrence. The Learned Trial Judge specifically considered feigning ignorance by PW.2 about the registration of the earlier case against A1 in Crime No.352 of 2021 on 20.06.2021 the previous day night and Crime No.351 of 2021 against A2 on the same day, namely, 20.06.2021 and about knowledge about accused No.A1 & A2 even after the registration of the case and release on station bail and held that evidence of PW.2 is false and



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also directed to take departmental action against the said officer. But he has relied his evidence and convicted the accused without properly evaluating the case of the accused that there was no recovery at all as allegedly deposed by PW. 2 & PW.1 on 21.06.2021 at 9.15 AM on the basis of the secret information received at 8.00 AM. It is the specific case of the accused that A1 and A2 were illegally detained in the police station on 20.06.2021 from 8.00 PM onwards and false case was registered. To prove the custody before the alleged recovery, they have marked Ex.D1, Ex.D2 & Ex.D3 during the cross examination of PW.2 on 31.01.2023. From the said documents it is clear that they were arrested in Crime Nos.350 of 2021 and 351 of 2021 on 19.06.2021 at 23.55 hours and 18.30 hours for the alleged occurrence of causing nuisance to the public on 23.30 hours and 18.00 hours at different places. For better appreciation of the above facts, this Court extracts the content of Ex.D3:



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Pat. No. 12

P.L. INDEX

Form No. 12

Serial number	Section	Occurrence	Report	Date of completion of investigation	Date of completion of investigation
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205	VII	20.6.21	20.6.21	20.6.21	20.6.21
206	VII	20.6.21	20.6.21	20.6.21	20.6.21
207	VII	20.6.21	20.6.21	20.6.21	20.6.21
208	VII	20.6.21	20.6.21	20.6.21	20.6.21
209	VII	20.6.21	20.6.21	20.6.21	20.6.21
210	VII	20.6.21	20.6.21	20.6.21	20.6.21
211	VII	20.6.21	20.6.21	20.6.21	20.6.21
212	VII	20.6.21	20.6.21	20.6.21	20.6.21
213	VII	20.6.21	20.6.21	20.6.21	20.6.21
214	VII	20.6.21	20.6.21	20.6.21	20.6.21
215	VII	20.6.21	20.6.21	20.6.21	20.6.21
216	VII	20.6.21	20.6.21	20.6.21	20.6.21
217	VII	20.6.21	20.6.21	20.6.21	20.6.21
218	VII	20.6.21	20.6.21	20.6.21	20.6.21
219	VII	20.6.21	20.6.21	20.6.21	20.6.21
220	VII	20.6.21	20.6.21	20.6.21	20.6.21
221	VII	20.6.21	20.6.21	20.6.21	20.6.21
222	VII	20.6.21	20.6.21	20.6.21	20.6.21
223	VII	20.6.21	20.6.21	20.6.21	20.6.21
224	VII	20.6.21	20.6.21	20.6.21	20.6.21
225	VII	20.6.21	20.6.21	20.6.21	20.6.21
226	VII	20.6.21	20.6.21	20.6.21	20.6.21
227	VII	20.6.21	20.6.21	20.6.21	20.6.21
228	VII	20.6.21	20.6.21	20.6.21	20.6.21
229	VII	20.6.21	20.6.21	20.6.21	20.6.21
230	VII	20.6.21	20.6.21	20.6.21	20.6.21
231	VII	20.6.21	20.6.21	20.6.21	20.6.21
232	VII	20.6.21	20.6.21	20.6.21	20.6.21
233	VII	20.6.21	20.6.21	20.6.21	20.6.21
234	VII	20.6.21	20.6.21	20.6.21	20.6.21
235	VII	20.6.21	20.6.21	20.6.21	20.6.21
236	VII	20.6.21	20.6.21	20.6.21	20.6.21
237	VII	20.6.21	20.6.21	20.6.21	20.6.21
238	VII	20.6.21	20.6.21	20.6.21	20.6.21
239	VII	20.6.21	20.6.21	20.6.21	20.6.21
240	VII	20.6.21	20.6.21	20.6.21	20.6.21
241	VII	20.6.21	20.6.21	20.6.21	20.6.21
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246	VII	20.6.21	20.6.21	20.6.21	20.6.21
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248	VII	20.6.21	20.6.21	20.6.21	20.6.21
249	VII	20.6.21	20.6.21	20.6.21	20.6.21
250	VII	20.6.21	20.6.21	20.6.21	20.6.21
251	VII	20.6.21	20.6.21	20.6.21	20.6.21
252	VII	20.6.21	20.6.21	20.6.21	20.6.21
253	VII	20.6.21	20.6.21	20.6.21	20.6.21
254	VII	20.6.21	20.6.21	20.6.21	20.6.21
255	VII	20.6.21	20.6.21	20.6.21	20.6.21

Serial number	Section	Occurrence	Report	Date of completion of investigation	Date of completion of investigation
203	VII	20.6.21	20.6.21	20.6.21	20.6.21
204	VII	20.6.21	20.6.21	20.6.21	20.6.21
205	VII	20.6.21	20.6.21	20.6.21	20.6.21
206	VII	20.6.21	20.6.21	20.6.21	20.6.21
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212	VII	20.6.21	20.6.21	20.6.21	20.6.21
213	VII	20.6.21	20.6.21	20.6.21	20.6.21
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250	VII	20.6.21	20.6.21	20.6.21	20.6.21
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252	VII	20.6.21	20.6.21	20.6.21	20.6.21
253	VII	20.6.21	20.6.21	20.6.21	20.6.21
254	VII	20.6.21	20.6.21	20.6.21	20.6.21
255	VII	20.6.21	20.6.21	20.6.21	20.6.21

8.1. After marking of Ex.D3 on 31.01.2023 during the cross examination of PW.2, the prosecution recalled PW.2 and marked the Ex.P15 to Ex.P18 and PW.2 gave explanation that there was mistake committed by him in making entry in Ex.D3 about the occurrence date and arrested date of 19.06.2021. He also deposed that A1 was arrested at 19.45 hours in Crime No.352 of 2021 and released on station bail on the same day itself at 20.15 hours. His brother Rajkumar stood as surety. Similarly, A2 was arrested at 18.15 PM on 20.06.2021 and he was released on station bail on 18.45 PM. His mother stood as surety. Therefore, they were released much prior to the secret information received by him in the early morning of 8.00 AM on 21.06.2021. The case of the accused is



that they were illegally detained and false case registered without any recovery.

In the said circumstances, during the course of hearing, this court asked PW.2 and enquired about the mistake of date mentioned in the Ex.D3. He has filed Affidavit before this Court and admitted the said mistake and he specifically stated that during his cross-examination on 11.04.2023 he gave the explanation about the mistake. In view of the above factual circumstances, the plea of the accused that they were in the custody of PW.2 and no recovery was made and false case was registered deserves to be accepted. The said finding of this court also gets strengthened by the following reasonings also:

8.1.1.PW.2 registered two cases one against A1 and another against A2 in Crime Nos.352 of 2021 and 351 of 2021. He admitted that 1st Crime Number was given against A1 for the occurrence that took place much after the time mentioned in the Crime No.352 of 2021. As per the evidence both occurrence places were fixed by PW.2 on two sides of the same place as admitted by him. Both occurrences were said to have happened in the evening hours of 20.06.2021. Ex.D1, the FIR in Crime No.352 of 2021 is relating to A1 accused with allegation that he committed nuisance near the Shah Theatre situated at Vaigai Vadakarai at 19.30 PM of 2021. He was arrested and brought to the Police Station at 20.00 hours and released on bail at 20.15 PM. In Ex.D2 it is stated that



on 20.06.2021 at 18.00 hours near the Alwarpuram, Theni Anandham Junction A2 caused nuisance and hence at 18.15 hours he was arrested and at 18.30 hours he was brought to the Police Station, and the accused was released at 18.45 hours. According to accused A2 he was in illegal custody from 19.06.2021 onwards. Ex.D3 also supports the said contention. In view of the above discussion, this court has no hesitation to accept the plea of the accused that false case was registered in order to escape from the allegation of illegal custody and brutal attack on the accused much prior to the alleged recovery. A1 also gave the explanation in this regard and A2 also gave the explanation in this regard A1 and A2 more specifically stated that they were not released on bail at all and were kept in illegal custody.

8.1.2.The Learned Judge has not considered the above aspects. It is true that A1 and A2 have previous antecedents. The case of A1 and A2 is that using their bad antecedents to their advantage this false case was registered without recovery. Moreover, PW.2 has not identified the accused before the Court. This Court perused the evidence of PW.2 and he has nowhere deposed about the identification of the accused. The Chief examination was recorded without producing the accused either through the video conference or physical appearance in the court and the same was vital in this case for the reason that the informer did not show the accused to PW.2 and PW.2 has no prior knowledge



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about the accused as admitted by him “தகவலாளி அடையாளம் காட்டுவதாக சொன்ன எதிரிகளை அதற்கு முன்பு நான் பார்த்துள்ளேனா என்றால் இல்லை”. That apart allowing the accused No.A5 flee from the scene of the occurrence is another circumstance to disbelieve the evidence of the recovery witness. Therefore, all above circumstances create doubt over the recovery of the contraband from the accused as alleged in the Recovery Magazar namely Ex.P7 and the mahazar also did not contain signature of remaining accused to prove their presence. Apart from that the confession was obtained only from A1 and he disclosed the place of the contraband and there was no concrete evidence to show that all the accused were found in joint possession of the contraband. Therefore the prosecution case of recovery is riddled with material infirmities and inherent improbabilities. It is well settled principle that previous cases pending against some of the accused is not a ground to dispense with the proof of possession of the contraband beyond reasonable doubt and presence of the previous bad antecedents will not be sufficient to convict the accused as held by the Hon'ble Supreme Court in the case of ***Rajendra Pralhadrao Wasnik v. State of Maharashtra*** reported in ***1977 (3) SCC 268*** and in the case of ***Ram Lakhan Singh V. State of U.P.*** reported in ***2019 (12) SCC 460***.



9.The specific case of prosecution is that A5 also was present and he escaped from the scene of occurrence. The Learned Judge acquitted the said accused and other accused U/s.29 of the NDPS Act. In the said circumstances without any evidence of conspiracy and without independent evidence against A1 to A4 about the joint possession, conviction U/s.8(c) r/w.20(b)(ii)(c) of NDPS Act is not legally maintainable. Further, there was tampering of sample as admitted by the PW.2 in his cross-examination which reads as follows:

“எஸ்.1 மாதிரி பொட்டலத்தில் வாய் பகுதி ஒட்டப்படாமல் திறந்து உள்ளது என்றால் சரிதான்”.

Therefore, this Court holds that prosecution miserably failed to prove the case against the Appellants and hence they are entitled to acquittal.

10.In the result, these Criminal Appeals stand allowed in the following terms:

10.1. The conviction under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act passed by the learned I Additional Special Judge, Special Court for NDPS Act cases, Madurai, dated 29.05.2023, in C.C.No.556 of 2021, is hereby set aside.

10.2.The appellants are acquitted from all the charges in C.C.No.556 of 2021, made in judgment dated 29.05.2023 passed by the learned I Additional



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Special Judge, Special Court for NDPS Act cases, Madurai.

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10.3.Fine amount paid by the appellants shall be refunded to the appellants forthwith.

10.4.Bail bond executed by the appellants shall stand terminated.

Consequently, connected miscellaneous petitions are closed.

25.10.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbm



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To
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- 1.The I Additional Special Court for NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Mathiciyam Police Station,
Madurai District
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J,

sbn

Crl.A.(MD).Nos.561, 613, 623 & 769 of 2023
and
Crl.M.P.(MD).Nos.3334 and 12374 of 2023

25.10.2025