

Crl.A.(MD).Nos.600 and 817 of 2022 and 950 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	27.06.2025
Pronounced On	:	26.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.600 and 817 of 2022 and 950 of 2023

1.Ravi

2.Dhinesh Kumar

... Appellants /Accused Nos.1 & 2
in Crl.A.(MD).No.600 of 2022

Periyakaruppan

... Appellant / Accused No.4
in Crl.A.(MD).No.817 of 2022

Praveenraj

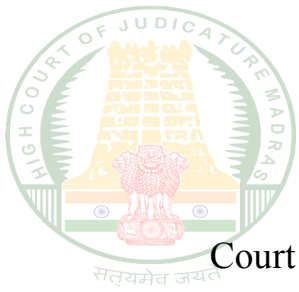
... Appellant / Accused No.5
in Crl.A.(MD).No.950 of 2023

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
Karimedu Police Station,
Madurai District.
(Crime No.1451 of 2020)

... Respondent / Complainant
in all appeals

COMMON PRAYER: Criminal Appeals have been filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.15 of 2021 dated 01.08.2022 on the file of the learned II Additional Special



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Court for NDPS Act Cases, Madurai and set aside the same.

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For Appellant : Mr.M.Jegadeesh Pandian,
Advocate
in Crl.A.(MD).No.600 of 2022

Mr.M.Pitchai Muthu,
Advocate
in Crl.A.(MD).No.817 of 2022

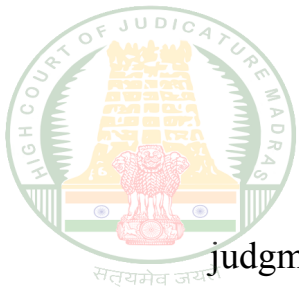
Mr.S.Muthumalairaja,
Advocate
in Crl.A.(MD).No.950 of 2023

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
in all appeals

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.

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') for the alleged possession of 32 kg of Ganja. The learned II Additional Special Court for NDPS Act Cases, Madurai convicted the appellants in C.C.No. 15 of 2021 under Sections 8(c) r/w 20(b)(ii)(C) *of NDPS Act, 1985* by its



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judgment and order dated 01.08.2022 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 Simple Imprisonment each***. Challenging the same, the appellants have filed these criminal appeals.

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

3.1. According to the prosecution, P.W.3 received secret information on 02.10.2020 at about 08.00 a.m. regarding the illegal transport of a large quantity of ganja. He recorded the information in the General Diary, reduced it into writing, and submitted it to his superior officer. Thereafter, along with the officials and the informer, he proceeded to the place of occurrence, namely Madurai Arapalayam Ammapalam Roundana, where the informer identified a two-wheeler bearing Reg. No.TN-64-L-3813, allegedly driven by A5. A5 then informed them about the arrival of a Honda City car, silver in colour, bearing Reg. No.TN-07-AW-0955.

3.2. P.W.3 and his team intercepted the said car and informed the remaining accused of their right to be searched under Section 50 of the NDPS Act in the presence of a Judicial Magistrate or a Gazetted Officer.



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The accused consented to be searched by P.W.3 himself. Upon conducting the search, all the accused voluntarily disclosed that they were transporting 32 kg of ganja in two bags kept in the boot space of the car.

3.3. P.W.3 weighed the contraband, confirmed it's weight around 32 kg, took representative samples, sealed them separately, and also sealed the remaining contraband. He arrested the accused, brought them to the police station, submitted a report under Section 57 of the NDPS Act, and registered a case in Crime No.1451 of 2020. He then submitted a report to P.W.4.

3.4. P.W.4 conducted the investigation, produced the accused before the Court for judicial custody, and produced all the contraband along with the samples and other material documents before the Court. He continued the investigation by collecting relevant documents, obtained the chemical analysis report, and filed the final report before the Special Court for offences under Sections 8(c) read with 20(b)(ii)(C), 25, and 29(1) of the NDPS Act, 1985.



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3.5. The learned Trial Judge, on perusal of records and on hearing

both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of the NDPS Act 1985 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.

3.6. The prosecution, in order to prove its case, had examined 7 witnesses as P.W.1 to P.W.4 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 4 material objects as P.M.O.1 to P.M.O.4.

4. The learned Trial Judge, considering the materials and circumstances found that all accused in C.C.No.15 of 2021 were guilty and passed the conviction and sentence against the appellants as stated above. The same was challenged by the appellants by filing these appeals before this Court.



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5.The learned counsel appearing for the appellants made the

following submission:

5.1.The learned counsel for the appellants would submit that there was no compliance of Section 50 of the NDPS Act, and that the joint consent letter obtained from all the accused to comply with Section 50 is not valid. It is further submitted that a search was conducted both on the body of the accused and in the car; hence, Section 50 is applicable, and there was no proper compliance. Therefore, he seeks acquittal.

5.2. It is further contended that there are material contradictions between the evidence of P.W.2, P.W.3, and P.W.4 with respect to the recording and acknowledgment of the information. Therefore, the version regarding the recording of information testified during the evidence of P.W.1 and P.W.4 is unreliable, and so, there was no proper compliance with Section 42 of the NDPS Act. Hence, he seeks acquittal.

5.3. The learned counsel for the appellants also submits that there is no mention about the receipt of the acknowledgment of the secret information by the immediate superior of P.W.4, which casts doubt over the material document, Ex.P3. There was also a delay in producing the



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contraband, and no evidence has been adduced to show that it was kept in safe custody.

5.4. It is further argued that all the M.Os. contain crime numbers and offence details, which indicates that they were prepared after the registration of the FIR, raising serious doubt over the recovery. Moreover, the Investigating Officer did not examine anyone to prove the ownership of the vehicle.

5.5. The learned counsel further submitted that once the appellants were acquitted of the charges under Sections 25 and 29(1) of the NDPS Act by the learned Trial Judge, the conviction and sentence for possession of the contraband is not legally sustainable. Therefore, they seek acquittal.

5.6. It is further submitted that there was no compliance with Section 52A of the NDPS Act and, therefore, the appellants are entitled to acquittal on the basis of the judgment of the Hon'ble Supreme Court in ***Mangilal v. State of M.P.*** reported in ***2023 SCC OnLine SC 862***.



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5.7. The prosecution was not able to produce any material to prove

the exact time and other factor, regarding receipt of secret information. In the said circumstances, there was no strict compliance of Section 42 of NDPS Act, 1985.

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

5.9. There was no examination of independent witnesses.

5.10. 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.

5.11. Further, with regard to the vehicle, which was used by the accused persons, the respondent, failed to establish the ownership of the vehicle; whom the vehicle belonged to was not at all investigated; 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



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that the appellants had driven the vehicle, which was not at all supported with the documentary evidence. How the vehicle came into the possession of accused persons was not at all explained; it remains unanswered. Therefore, he seeks for acquittal.

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

6.1. P.W.3 and P.W.4 have clearly deposed about the recovery of the contraband from the appellants. Their evidence is cogent and trustworthy, and the conviction and sentence imposed against the appellants are legally valid. The same has been properly appreciated by the learned Trial Judge, and therefore, there is no reason to differ from the findings of the Trial Court.

6.2. In the present case, there was no necessity to comply with Section 50 of the NDPS Act, as the recovery was made from bags kept in the car, and not from the body of the accused. Even otherwise, the evidence of P.W.3, P.W.2, and P.W.1 clearly establishes that the accused were orally informed of their rights under Section 50.



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6.3. Further, the judgment relied on by the defence, namely ***State***

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of Rajasthan v. Paramananda reported in ***2014 (5) SCC 345***, was considered in detail by the Hon'ble Supreme Court. In that decision, the Supreme Court elaborately discussed the earlier precedents on Section 50 compliance and held that, in cases where the contraband is recovered from bags, there is no necessity to comply with Section 50.

6.4. The learned Additional Public Prosecutor further submitted that the crime number mentioned in the M.Os. was only for the purpose of keeping the material objects in safe custody in the Court with proper identification. The same was duly considered by the learned Trial Judge in paragraph 34 of the judgment, which contains valid reasons and, therefore, warrants no interference.

6.5. The learned Additional Public Prosecutor also submitted that the delay in producing the contraband is not material when the seal remained intact. Therefore, it is contended that the prosecution has clearly proved the case beyond reasonable doubt, and the learned Trial Judge has rightly considered the evidence and convicted the accused.



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6.6. The Hon'ble Supreme Court, in a subsequent decision, made

elaborate discussion on the compliance of Section 52A of the NDPS Act and specifically held that non-compliance with Section 52A is not a ground to disbelieve the recovery, when the evidence of the recovery witnesses is cogent and trustworthy

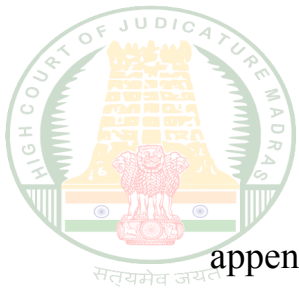
6.7. Therefore, he seeks for confirmation of the conviction and sentence passed by the learned trial Judge.

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. Discussion on compliance under Section 42 of the NDPS

Act:-

P.W.3 received the secret information on 02.10.2020 at about 08.00 a.m., about the illegal possession of the contraband by the appellants. P.W.3 reduced the said information in writing after making entry in the General Diary. He also sent the information to the Immediate Superior, namely, P.W.4. P.W.4 also acknowledged the same by



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appending his signature and granted permission to conduct raid. The said

document was marked under Ex.P.2. The same reached the Court on the date of the recovery itself. Apart from that, the document was produced on the date of remand itself. There was no dispute over the said document. P.W.3 and P.W.4 clearly deposed about the above facts in cogent manner and they also deposed about the acknowledgement of the information. Therefore, the contention of the learned counsel for the appellants that there is non-compliance of Section 42 of the Act, is misconceived one and the same is against the facts. In this aspect, the prosecution clearly proved the compliance under Section 42 of the Act.

8.2.The learned counsel for the appellant would submit that the prosecution case itself is that the searching officer received the secret information and they did the search, recovery and arrest. The learned trial Judge is not correct in holding that the Section 42 of the Act, is not applicable without considering the plea of the accused that the non-compliance of the mandatory procedure under Section 42 of the Act is erroneous as per the principle laid down by the Hon'ble Constitution Bench of Supreme Court in ***Karnail Singh Vs, State of Haryana*** reported in ***(2009) 3 SCC (Crl.) 887***.

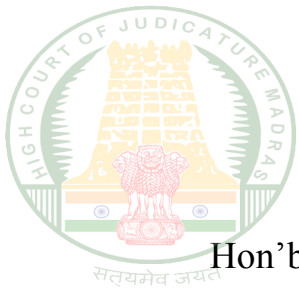


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8.3. It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble three Judge Bench of the Hon'ble Supreme Court in ***SK.Raju Alias Abdul Haque Alias Jagga Vs, State of West Bengal*** reported in ***(2018) 9 SCC 708*** has held that the search was made in the public place and therefore, Section 43 of the Act alone is attracted and necessity to comply with the requirement under Section 42 will not arise.

8.4.The learned counsel for the appellant would submit that the Hon'ble Supreme Court in the ***S.K.Raju case*** on facts has held that Section 43 of the Act alone is applicable. In the ***S.K.Raju case***, even though information was received prior to the search and recovery of contraband from the accused, the information received was '*when he was walking along the Picnic Garden Road in front of Falguni Club*', and according to the Hon'ble Supreme Court, it was not a building, conveyance or enclosed place. Further according to the Hon'ble Supreme Court, the said recovery was made in the public place, which was accessible to the public and fell within the ambit of the phrase of the public place in the explanation to Section 43 of the Act. Therefore, the



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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** reported in **2020 4 SCC 1** would submit that the ratio decidendi in **S.K.Raju case** is contrary to the dictum of 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** is only a 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**



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v) *Sukhdev Singh Vs, State of Haryana* reported in(2013) 2 SCC

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**vi) *State of Rajasthan Vs, Jagraj Singh @ Hansa* reported in
(2016) 11 SCC 687**

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

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

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

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

8.5.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 for the searching officers, who come under the purview of the NDPS Act, who have reason to believe any narcotic drugs or psychotropic substance or controlled substance is illegally acquired or concealed.



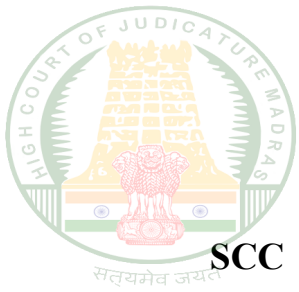
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8.6. Section 41(2) of the Act empowers the searching officer, who

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.

8.7. Section 42 of the Act following Section 41 of the Act mandates to follow certain procedure in the case of the arrest and seizure on the basis of the information. The object of the procedure enumerated under Section 42 of the Act either to arrest or search the person and recover the contraband is to safeguard the constitutional right envisaged in the constitution of India for the reason that the same can be made without obtaining the warrant from the Court.

8.8. As per the Section 42 of the Act, empowered officer who has received the secret information about the illegal possession, transportation of narcotic drugs or psychotropic substance or controlled substance, 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



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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 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



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practical, record the information in writing and forthwith inform the same to the official superior.

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

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police



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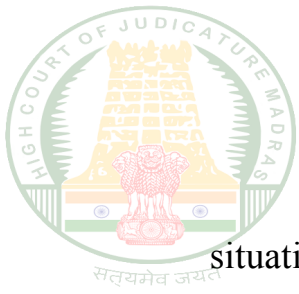


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station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior; then it will be a suspicious circumstance being a clear violation 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.”

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

8.10. From the reading of Section 43 of the Act, it is clear that when the officers make a recovery by chance 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 the different



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situations. Section 43 of the Act authorises the empowered officer mentioned in Section 42 of the Act to search and seize the contraband in any public place namely, any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public or in transit, without warrant in the case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc., They 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 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 there is mandatory requirement of the compliance of Section 42 of the Act, on the basis of the available evidence.



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8.11. 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 witnesses and the official witnesses in this aspect. When the Immediate Superior officer comes into the box and deposes about the receipt of the information, no further requirement is needed about the compliance of Section 42 of the Act. The minor discrepancies in the evidence of the 'Immediate Superior' and the 'Searching Officer' when it has not affected the prosecution case of receipt of information are not a ground to disbelieve the compliance. Further, the Hon'ble Supreme Court reiterated the principle that unless the discrepancies go to the root of the prosecution version, the same is not a ground to disbelieve the testimony of the witness. Apart from that, most of the witnesses are the police officers and examination is conducted after a lapse of several months and we cannot expect them to



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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. 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 of Section 42 of the Act.

9.Proof of consious possession:

9.1. All the accused jointly disclosed about the two bags of ganja, which were recovered by P.W.3 along with the other officials. P.W.3 has clearly deposed about the disclosure of the said two gunny bags by the accused persons, and his testimony is corroborated by the evidence of P.W.3. The *athatchi* was also marked in evidence, and the witnesses were subjected to incisive cross-examination by the defence counsel regarding the seizure of ganja. In the *athatchi* the signatures of accused are also found, which have never been disputed. Therefore, from the *athatchi* the conscious possession of the accused stands clearly proved.



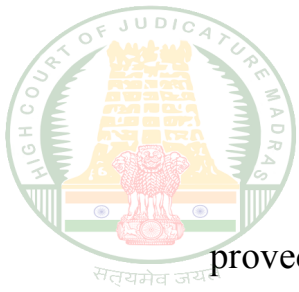
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10.Delay in producing the contraband:

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10.1. The learned counsel for the appellants submitted that the delay in producing the contraband before the Special Court is fatal to the prosecution. It is true that there was some delay in producing the contraband before the Special Court. However, this delay is not material in the present case, as the contraband was initially produced before the learned Judicial Magistrate, along with the accused, at the time of remand. All the contraband had been duly sealed in bags and were later produced before the Special Court. This delay, by itself, is not a ground to disbelieve the evidence of the recovery witnesses.

10.2. Once the material was produced before the learned Judicial Magistrate and its identity was affirmed, this Court is unable to accept the contention of the learned counsel for the appellants regarding the delay. In similar circumstances, the Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379***, held that delay in producing seized contraband before the Court may be a ground to doubt the prosecution case only the cases where the seizure itself is doubtful. In the present case, as discussed above, the seizure of the contraband has been



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proved beyond all reasonable doubt, and no specific reason has been attributed against P.W.3 for registering a false case against the accused persons. The learned Trial Judge has therefore rightly held that the delay in this case is not a material circumstance.

11. Discussion on Section 25 of NDPS Act:

11.1 The Hon'ble Supreme Court in the case of **Rizwan Khan Vs.**

State of Chattisgarh has held as follows;

"30. Now as far as the submission on behalf of the accused that the ownership of the motor cycle (vehicle) has not been established and proved and/or that the vehicle has not been recovered is concerned, it is required to be noted that in the present case the appellant and other accused persons were found on the spot with the contraband articles in the vehicle. To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act? Therefore, merely because of the ownership of the vehicle is not



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established and proved and /or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot".

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11.2 Therefore this court declines to accept the argument of the learned counsel for the appellant that without proof of the ownership of the vehicle conviction under section 25 of NDPS Act is not maintainable. Once the prosecution has been successful in proving and establishing the recovery of contraband from the accused on the occurrence place, police need not establish ownership of the vehicle.

12. 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. Therefore, this Court heard the arguments in details on 27.06.2025 and the same are extracted hereunder:-

*“ When the matter taken up for hearing on 06.06.2025,
this Court passed the following order :-*

*“The case is posted to clarify whether the
contraband without 'flowering tops' would come*



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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.”

2. In continuation of hearing dated 06.06.2025, this case is taken up for hearing today and this Court asked about



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*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 'கூதிற்கள்' and therefore, the same includes flowering and fruiting tops. Hence, the learned Additional*



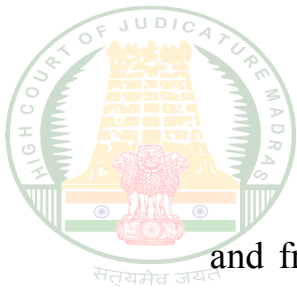
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Public Prosecutor submitted that the recovered ganja with leaves, seeds, 'கத்திர்கள்' would come under the definition of ganja. He also submitted that as per Section 2(iii)(c) of NDPS Act, “any mixture other than the flowering tops also would come under the definition of ganja”.

4. The learned counsel for the appellants also cited the various Hon'ble High Courts and this Court and seeks this Court to hold that from the recovered ganja, the luxuriant leaves, stalk, seeds have to be excluded and conviction under Section 20(b)(ii)(C) of NDPS Act may be converted into conviction under Section 20(b)(ii)(B) of NDPS Act and seeks to reduce the sentence of imprisonment.

5. After hearing the learned counsel appearing for both side at length, this Court reserved the matters for judgment.”

13. 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



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and fruiting tops. However, the report clearly discloses the presence of cannabinoids. Even if the ganja was recovered along with leaves, seeds, and stems, as suggested by the learned counsel for the appellants, weighing the flowering tops, fruiting parts, and other materials separately would not make any material difference, since the recovered contraband weighs more than 30 kg, which is well above the commercial quantity fixed under the NDPS Act, i.e., 20 kg.

14. 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.

15.Conclusion:-

From the evidence, it is apparent that P.W.3 received secret information and the said secret information received was duly reduced in

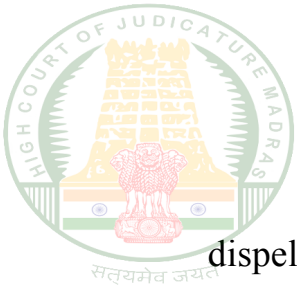


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writing and forwarded to the immediate Superior and on his instruction

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 was duly packed separately. The recovered contraband of 32 kgs of Ganja is more than the commercial quantity i.e., 20 Kg. The said samples were subjected to analysis and the Report confirmed the presence of “cannabis”.

15.1. The entire seized contraband namely recovered Ganja was produced before the Court and marked without any dispute as M.O.1 to M.O.4. The prosecution witnesses viz., P.W.1 to P.W.4, 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 32 kgs of Ganja and the same was in their conscious possession. The appellants never 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



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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. Therefore, all the appeals deserve to be dismissed.

16. In the result,

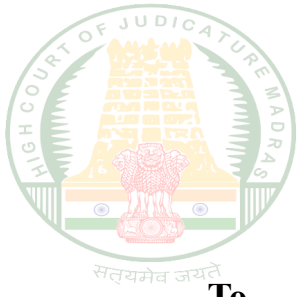
(i) The Criminal Appeals are dismissed and the judgment passed by the learned II Additional Special Court for NDPS Act Cases, Madurai in C.C.No.15 of 2021 dated 01.08.2022 is hereby confirmed.

(ii) The bail bond executed by the appellants are hereby cancelled.

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

26.08.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To
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- 1.The learned Special Judge,
II Additional Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Karimedu Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
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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Pre-delivery order made in
Crl.A.(MD).Nos.600 and 817 of 2022 and 950 of 2023

26.08.2025