



Crl.A.(MD)No.789,799,803 & 1060 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**

Crl.A.(MD).Nos.789, 799, 803 & 1060 of 2023

and

Crl.M.P.(MD).Nos.15170 and 16859 of 2023

Crl.A.(MD).No.789 of 2023

Sabiq Rahuman

... Appellant  
/Accused No.7

Vs.

State rep by  
The Inspector of Police,  
NIB CID,  
Theni  
(Crime No.47 of 2017)

... Respondent

**PRAYER:** Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.326 of 2017 dated 10.06.2023 passed by the District and Sessions Court (For Communal Clash Cases in Southern District), Madurai and to set aside the same.



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For appellant : Mr.G.Karuppasamy Pandian for  
Mr.M.Bazeerdeen

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

Crl.A.(MD).No.799 of 2023

Panaraja

... Appellant  
/Accused No.1

Vs.

State rep by  
The Inspector of Police,  
NIB CID  
Theni  
(Crime No.48 of 2017)

... Respondent

**PRAYER:** Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the entire records pertaining to the judgment rendered by the District and Sessions Court, (Trial Court for south District Communal Clash Cases), Madurai in C.C.No.326 of 2017 vide judgment dated 10.07.2023 convicting the appellant under Section 8(c) r/w 20(b) (ii) (C) of the NDPS Act sentencing him to undergo 10 years of RI and to pay a fine of Rs.1,00,000/- and in default to undergo 6 months S.I and set aside the same.



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For appellant : Mr.M.Pitchai Muthu

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

Crl.A.(MD).No.803 of 2023

Murugan @ Pulimurugan

... Appellant  
/Accused No.3

Vs.

State rep by  
The Inspector of Police,  
NIB CID  
Theni  
(Crime No.48 of 2017)

... Respondent

**PRAYER:** Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the entire records pertaining to the judgment rendered by the District and Sessions Court, (Trial Court for south District Communal Clash Cases), Madurai in C.C.No.326 of 2017 vide judgment dated 10.07.2023 convicting the appellant under Section 8(c) r/w 20(b) (ii) (C) of the NDPS Act sentencing him to undergo 10 years of RI and to pay a fine of Rs.1,00,000/- and in default to undergo 6 months S.I and set aside the same.



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For appellant : Mr.M.Pitchai Muthu

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

Crl.A.(MD).No.1060 of 2023

Tamnilvanan

... Appellant  
/Accused No.4

Vs.

State rep by  
The Inspector of Police,  
NIB-CID  
Theni  
(Crime No.48 of 2017)

... Respondent

**PRAYER:** Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the entire records pertaining to the judgment rendered by the District and Sessions Court, (Trial Court for south District Communal Clash Cases), Madurai in C.C.No.326 of 2017 vide judgment dated 10.07.2023 and set aside the same.

For appellant : Mr.S.Muniyandi

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



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## **COMMON JUDGMENT**

The appellants in all the appeals are the accused Nos.1, 3, 4 and 7 in C.C.No.326 of 2017 on the file of the District and Sessions Court, (Trial Court for south District Communal Clash Cases), Madurai and they have filed these appeals, challenging the conviction under Section 8(c) r/w 20(b) (ii)(C) of the NDPS Act, 1985 and sentencing them to under go 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- with default of sentence of 6 months of Simple Imprisonment, vide judgment dated 10.07.2023.

2.On 15.11.2016 at 07.20 am., while P.W.2 was working as the Inspector of Police of Cuddalore Police Station, Theni District, had received secret information through informer about the illegal transit and possession of huge quantity of Ganja in a Toyota Qualis Car bearing registration No.TN -59 S 8899 on Cuddalore - Cumbum Main road. Upon receipt of the information, he made entry in the general diary and informed through telephone to his immediate superior P.W.3 and also reduced the same in writing and sent the said information in writing to the immediate superior. Thereafter, he and his team went to the occurrence place along with informer

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and informer identified the said vehicle at 08.15 am near Durgaiamman Kovil in the Cuddalore-Cumbum Main road. Following the same, P.W.2 and the other officers intercepted the vehicle and found that 7 persons were inside and informed about their right of search before the Gazetted officer or learned Judicial Magistrate under Section 50 of the NDPS Act 1985 and they consented to conduct the said search by the police officers themselves, P.W.2 conducted the search in the Toyota Qualis Car. In the car, five Gunny bags with quantity of 22 kgs each were found and they weighed and found 122 Kgs of Ganja and also taken the samples and packed the remaining contraband with proper seal. Thereafter, confession has been recorded and during the said process A6 slipped away from the scene of the occurrence. The remaining accused were arrested and brought to the police station with contraband along with the material documents and FIR was registered in Crime No.286 of 2016 under Section 8(c) r/w 20(b)(ii)(C) r/w 25 of the NDPS Act, 1985. The report under Section 57 of the NDPS Act, 1985 was submitted to immediate superior. Subsequently he continued the investigation and handed over the investigation to the NIB Police officers. P.W.3/NIB Police Officer conducted investigation and he further handed over the investigation to P.W.4/another NIB Police Officer. P.W.4 continued the investigation by examining all the witnesses, by arresting the absconded



accused and obtaining the chemical analysis report, filed the final report before the District and Sessions Court (For Communal Clash Cases in Southern District), Madurai and the same was taken on file in Spl.C.C.No. 326 of 2017 under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985. Before framing the charge, A2 died. Thereafter, the learned trial Judge summoned the remaining 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.The prosecution, to prove the case examined P.W.1 to P.W.4 and marked Ex.P1 to Ex.P11 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 no witnesses were examined and Ex.D1 alone was marked. During the course of the trial, A5 absconded and hence, the case against him was split up in C.C.No.741 of 2022 and the trial was continued against the A1, A3, A4 and A7 and A6. The learned trial Judge considered the material and convicted A1, A3, A4 and A7 and acquitted A6 by the impugned judgment dated 10.07.2023. 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 NDPS Act 1985. There are several material inconsistencies between the evidence of P.W.2 and P.W.3 about the compliance of Section 42 of the NDPS Act, 1985. Even the marked document under Ex.P4 did not contain any material to presume the compliance of Section 42 of the NDPS Act, 1985 about the acknowledgment by the immediate superior about the receipt of the information. Therefore, they seek to set aside the impugned judgment.

4.1.There was no strict compliance of Section 50 of the NDPS Act. The search officer obtained the signature of the accused in the joint communication which is not permissible as per law. The seized contraband was produced before the Special Court only on 25.01.2016. Having seized contraband on 15.11.2016, the same had been produced only on 25.01.2016 before the Special Court and there was no explanation. Therefore, they seek to acquit the accused.

4.2.Thiru.Muniyandi learned counsel appearing for the appellant in Crl.A.(MD).No.1060 of 2023 would specifically submit that in Ex.P4, there



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was no required acknowledgment of receipt of the information. The same has also been admitted by P.W.2. Therefore, there was total non-compliance of Section 42 of the NDPS Act, 1985.

4.3.Thiru.G.Karuppasamy Pandian, learned counsel appearing for the appellant in Crl.A.(MD).No.789 of 2023 would submit that A7 was driver of the vehicle and he had no knowledge about the contraband in the car and the prosecution miserably failed to prove the conscious possession of the accused No.7 and therefore, he seeks for acquittal.

4.4.All the learned counsel also would submit that the failure to follow of Section 52 A of the NDPS Act 1985 is fatal to the prosecution. They would also submit that several discrepancies are available on record between the evidence of P.W.1 to P.W.4 in respect of the recovery of the contraband and compliance of Section 42 of the NDPS Act,1985.

#### **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.P4 was produced. Therefore, there is a strict compliance of section 42. Therefore, he seeks to confirm the sentence and conviction.

5.1.The learned additional public prosecutor also would submit that Section 50 of the NDPS Act is not applicable to the present case and even otherwise, as per the law laid down by the Hon'ble Constitution Bench of the Supreme Court even oral communication amounts to sufficient compliance and P.W.2 and P.W.1 clearly deposed about the said compliance. Therefore, he seeks to dismiss the appeals.

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 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 and hence, he seeks to confirm the conviction and sentence.

5.3. Non compliance of Section 52(A) of the NDPS Act, 1985 is not a material singular circumstance to disbelieve the evidence of recovery and he relied the judgment of this Court in the case of *Mareeswaran vs. State of Tamilnadu* reported in **2023 (2) L.W. Crl 893**, and finally, the learned Additional Public Prosecution submitted that in view of the examination of the witnesses long after the date of the occurrence, minor discrepancy would always find to occur. But, the said discrepancy is not material one and will not go to the root of the prosecution case. Therefore, he seeks to confirm the impugned judgment.

6.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



7. Whether the conviction and sentence passed against the appellants under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985 is maintainable even after acquittal under Section 25 of the NDPS Act, 1985?

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

On 15.11.2016 at about 07.20 am, P.W.2 had received the secret information and he had informed to his superior through the telephone and reduced the same in writing and sent the same to him. Ex.P.4 has been marked without objection and P.W.2 clearly deposed about the said document. He was subjected to the lengthy cross examination in this aspect and nothing was elicited to disbelieve his version about the compliance of Section 42 of the NDPS Act, 1985. In Ex.P4, the immediate superior also acknowledged the receipt of the said information. Therefore, this Court finds no merit in the contention of the learned counsel for the appellant that the prosecution failed to prove the compliance of Section 42 of the NDPS Act, 1985.

**9. Discussion about the compliance of Section 50 of the NDPS Act:**

Since recovery has been made from the car, Section 50 has no application. In this aspect, it is relevant to remind the principle laid down by



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the Hon'ble Supreme Court about compliance of Section 50 of the NDPS Act.

9.1.The learned counsel for the appellant would submit that the searching officer made a search on the body of the accused and also the bag of the accused and the officers should have strictly complied the mandate of Section 50 of the NDPS Act. The searching officer has given joint search option to all the accused. In the said alleged search memo, they had not obtained the signature of all the accused. Therefore in this case, there is no compliance of section 50 of NDPS Act.

9.2.The learned Additional Public Prosecutor would submit that if the contraband was recovered either from the bag of the accused or vehicle of the accused, the compliance of the section 50 of NDPS Act need not be followed. As per the evidence of the searching officer and the member of the searching team, they gave clear option orally about the right to be searched before the Gazetted officer or the learned nearby Judicial Magistrate and thereafter they reduced it into writing. Oral option itself is compliance of section 50 of NDPS Act. Two Constitution Bench Judgment of the Hon'ble Supreme Court never insisted to prepare individual consent letter and the



only requirement is to inform their right. When the evidence are cogent and trustworthy about the oral information of the right of the accused to be searched in the presence of the Gazateed officer or learned nearby Judicial Magistrate, failure of the searching officer to obtain signature in the joint consent letter is not a ground to hold that section 50 of NDPS Act was not complied with to seek acquittal.

9.3. To consider the non compliance of section 50 of NDPS Act, this court likes to summarise the principles laid down by the Hon'ble Supreme Court based on the Hon'ble Constitution Bench in the case of:

1. *“State of Punjab Vs Baldev Singh reported in 1999 (6) SCC 172”*
- and 2. In the case of *“Ranjan Kumar Chadha Versus State of Himachal Pradesh” reported in 2023 SCC Online SC 1262”*.

9.4. To consider the development of the march of law from **1999 (6) SCC 172** to **2023 SCC Online SC 1262**, this court divides the case laws into three categories:-

9.4.1. The conflicting decisions between various Judgments of the Hon'ble Supreme Court before 1999 relating to the applicability of Section 50 of NDPS Act of seizure of the contraband from the accused other than his



body is settled by the Hon'ble Constitution Bench in the case of “***State of Punjab Vs Baldev Singh*** reported in **1999 (6) SCC 172**”.

9.4.2. In spite of the specific law laid down by the Hon'ble Constitution Bench, again the issue of applicability of section 50 of NDPS Act was referred to the Hon'ble Three Judges Bench of Hon'ble Supreme Court in case of ***State of H.P. Vs. Pawan Kumar*** reported in **2005 (4) SCC 350** to resolve the conflicting decisions and the Hon'ble Supreme Court in ***Pawan Kumar*** case has held as follows:

*“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section*



50 of the Act.

12. *An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the words “search of person”. One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.”*



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9.4.3. The view taken in the case of Pawan Kumar has been reaffirmed once again by the Hon'ble Constitution Bench in the case of ***Vijaysingh Chandubha Jadeja v. State of Gujarat*** reported in ***(2011) 1 SCC 609***.

9.4.4. In spite of the clear law laid down by the Hon'ble larger Bench of Supreme Court, once again there was some cleavage in the Hon'ble two judges bench of Supreme Court with respect to the applicability of section 50 NDPS Act in the case of ***State of Rajasthan v. Parmanand*** reported in ***(2014) 5 SCC 345*** and Hon'ble Three Bench of Hon'ble Supreme Court in the case of ***S.K.Raju @ Abdul Haque @ Jagga V. State of West Bengal*** reported in ***2019 (1) SCC (CRI) 371***. The Hon'ble Two Judges Bench of Supreme Court in the case of “***Ranjan Kumar Chadha Versus State of Himachal Pradesh*** reported in ***2023 SCC Online SC 1262***” made a detailed discussion upon referring various decisions and formulated guidelines with regard to the circumstances under which section 50 of the NDPS has no application.

9.5. In this case, the prosecution proved through the evidence of P.W.1 and P.W.2 about the oral communication which is sufficient compliance as



per the above law laid down by the Hon'ble Supreme Court. Apart from that, the recovery was made from the car and consequently Section 50 of the NDPS Act, has no application.

#### **10. Discussion on the Non-compliance of Section 52A of the NDPS**

##### **Act:**

The entire contraband was produced before the learned Judicial Magistrate at the time of the remand and entire contraband has also been marked at the time of the trial. P.W.1 and P.W.2 also identified the said seized contraband before the Court. This Court in the case of *Mareeswaran Vs. State of Tamil Nadu* reported in *(2023) 2 L.W. Crl. 893* made elaborate discussion, and held non-compliance of Section 52(A) of the NDPS Act, in the above said circumstances is not a ground to acquit the accused.

10.1. Further, the Hon'ble Supreme Court in the following cases has held that non-compliance of Section 52(A) of the NDPS Act, is not a ground to acquit the accused doubting the recovery:

*Narcotics Control Bureau v. Kashif*, reported in *2024 (11) SCC 372*  
(Para 41, 42, 46, 47, 50.4)



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“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 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



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*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 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.

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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 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.”

10.2. In the case of ***Bharat Aambale v. State of Chhattisgarh*** reported in **2025 SCC online SC 110** para 50 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



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*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 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 (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*



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*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 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*



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*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) 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.”*

#### **11. Discussion on the delay in producing the contraband:**

The Hon'ble Supreme Court in ***Hardip Singh Vs. State of Punjab*** reported in **(2008) 8 SCC 557** has held as follows:-

*“it was of No consequence, for the fact of the recovery of the said sample from the possession of the appellant had been proved and established by cogent and reliable evidence and that*



*apart, it had also come in evidence that til the date of parcels samples, were received by the chemical examiner, the seal put on that parcel was intact..... The plea that there was 40 days delay was immaterial and would not dent of prosecution case.”*

11.2. In ***State of Rajasthan Vs. Sahiram*** reported in (2019) 10 SCC

**649** the Hon'ble Supreme Court has held as follows:-

*“If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that the report of the forensic experts shows the potency nature and quality of the contraband material and that based on such material the essential ingredients constituting an offence are made out.”*

**12. Discussion on the sustainability of the conviction under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985 after acquittal under Section 25 of the Act:**

12.1 As per Section 20(b)(ii)(C) of the Act, if any person 'possesses' 'transports' 'uses cannabis' above the commercial quantity, they are liable to be convicted under Section 8(C) r/w 20(b) (ii)(C) of the NDPS Act. 20(b)(ii) (C) of the NDPS Act, is an independent provision. Provision under Section 25 of the NDPS Act, has a different intention. To sustain the conviction



under Section 25 of the NDPS Act, the prosecution shall prove any of the following facts:-

- i) The accused is the owner of the property*
- ii) Either the vehicle or the place is in the occupation of the accused.*
- iii) The accused is having control over the vehicle or place.*

12.2. But, to sustain the conviction under Section 20(b)(ii)(C) of the NDPS Act, it is not necessary to prove the above facts. To sustain a conviction under Section 20(b)(ii)(C) of the NDPS Act, only requirement is either to prove the possession of the contraband in the car or transportation of the said contraband in the car. In this case, evidence of P.W.1 and P.W.2 clearly proved that the appellants were travelling in the car along with the contraband. When the evidence of the prosecution witnesses P.W.1 and P.W.2 are cogent and trustworthy about the recovery of contraband in the car and when there is no explanation under Section 313 Cr.P.C., this Court concurs with the finding of the learned trial Judge that the appellants are liable to be convicted under Section 8(C) r/w 20(b)(ii)(C) of the Act. Therefore, the acquittal under Sections 25 and 29(1) of the NDPS Act ipso fact, is not a bar to convict the appellants under Section 8(c) r/w 20(b)(ii)(C) of the Act.



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### **13. Discussion on the defence document:**

The learned counsel for the appellants would submit that subsequent to the registration of the case, all the accused were booked under the Prevention of Detention Act of Tamil Nadu, namely, Act, 14 of 1982 as drug offenders. They served the Booklet. There was some discrepancies in the said document and the document marked before this Court. Therefore, there was a doubt over the prosecution case and they seek acquittal. The learned trial Judge considered the said submission and rejected the same by giving reason that the said Xerox copy of the document was furnished in the form of booklet. The original documents were filed at the earliest point of time before the Court. The said document was inconsonance with the prosecution case. Therefore, this Court is unable to accept the argument of the learned counsel for the appellants on this ground also.

### **14. Discussion on the Non-Examination of the independent witnesses:**

The learned counsel made the strenuous argument about the non-examination of the independent witness. According to the appellants the occurrence took place on the main road and non -examination of the



independent witnesses is a material circumstance to disbelieve the evidence of the police witness about the recovery. They had also stated that in the case of **Mugesh singh**, the Hon'ble Constitution Bench directed to consider the said examination of the independent witnesses on facts of the each case.

14.1.The learned Additional Public Prosecutor countered the said argument that the Hon'ble Constitution Bench in **Mugesh Singh case** clearly laid down the law that it is not permissible to raise the suspicion over the recovery on the ground of the non-examination of the independent witness by doubting the testimony of the police witness. In this case, no circumstances were elicited to disbelieve the evidence of P.W.1 and P.W.2.

14.2.In the above circumstances, this Court called the high level officer from NIB Department to address the said non-examination of the independent witness and suggested to frame guidelines in view of the guidelines issued by the Hon'ble Supreme Court in the case of **Shafhi Mohammad vs. State of H.P.**, reported in **2018 (2) SCC 801** and the mandatory requirement of taking video graph as per the new BNSS.



14.3. In this case, the High Level Officer would submit that P.W.1 and P.W.2 clearly deposed about the compliance of the mandatory provisions and their evidence are cogent and trust worthy in every aspect of recovery. This Court also perused the evidence of P.W.1 and P.W.2 and finds no reason to reject the submission of the learned Additional Public Prosecutor about the reliability of the evidence of P.W.1 and P.W.2 about the recovery of the contraband. In view of the above discussions, this Court finds no merit in these appeals.

15. This Court has perused the cross-examination with regard to Section 57 report and the chemical analysis report. It is true that, in the chemical analysis report, there is no specific mention of the flowering and fruiting tops. However, the report clearly discloses the presence of cannabinoids. Even if the ganja was recovered along with leaves, seeds, and stems, as suggested by the learned counsel for the appellants, weighing the flowering tops, fruiting parts, and other materials separately would not make any material difference, since the recovered contraband weighs nearly 122 kg which is whooping commercial quantity as per the NDPS Act.



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16. 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.

17. In almost all cases, the Investigating Agency has received the secret information about illegal transit and possession of the contraband atleast one hour before and usual submission of the prosecution is that there was no necessity to examine the independent witnesses. But this Court finds difficulty to accept the same in all cases. Therefore, this court asked the head of the Investigating Agency to redress the above said issue by suggesting to follow the modality which is being followed by vigilance department in the case of trap in order to strengthen the case and to avoid the cloud of suspicion over the recovery. Further, this court also insists the compliance of the direction issued by the Hon'ble Supreme Court to video graph the investigating process in the case of *Shafhi Mohammad vs. State of*



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**Himachala Pradesh** reported in **2018 (2) SCC 801** and also reminded them about the BNSS requirement to video graph the recovery. The investigating Agency after the detailed deliberation with all the stake holders came forward with following Notification:

*Rc.No.C1/1523/Crime/2025*

*Office of the  
District General of Police  
Head of Police Force,  
Tamil Nadu, Chennai-04  
Dated 15.05.2025*

**CIRCULAR MEMORANDUM**

*Sub:- Narcotics NDPS Act, 1985 non showing of independent responsible witnesses in NDPS Act cases observation of the Hon'ble Madurai Bench of Madras High Court - reg*

*Ref:- 1. Letter received from the Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai dated 21.01.2025.*

*2. Madurai Bench of Madras High Court, Madurai Cr1.A(MD). No. 789,799,803 and 1060 of 2023-dated 21.01.2025.*

*In the letter cited above, the Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai has informed that the Hon'ble Madurai Bench of Madras High Court while hearing the above cited Crl.A(MD).No.789,799,803 and 1060 of 2023 has observed that in all the NDPS Act cases*



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*independent responsible witnesses were neither shown nor examined as Seizure Mahazar witnesses, even though there is a time gap between the receipt of secret information and seizure made.*

*2. As per Section 50 of NDPS Act, an officer conducting search shall if the persons to be searched so require take such person to the nearest Gazetted officer of any of the departments or nearest Magistrate. But if the officer has reason to believe that it is not possible to take the person to the Gazetted officer or Magistrate without the possibility of the person searched parting with possession of the narcotic drug, he may conduct the search as provided under section 103(4) of BNSS.*

*3. As per section 103(4) of BNSS, before making a search, the officer about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate, to attend and witness the search and may issue an order in writing to them. The search shall be made in their presence, and a list of things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer*

*4. Any person who, without reasonable cause, refuses or neglects to attend and witness a search, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 222 of BNS.*

*5. The presence of independent witnesses helps to safeguard the accused against false or exaggerated allegations of possession. It minimizes the possibility of planting evidence or tampering with seized substances. Independent witnesses ensure that the chain of custody and seizure process is followed correctly, making the evidence more likely to be admissible in court. Courts often scrutinize the involvement of witnesses during a seizure to verify compliance with legal safeguards.*

*6. It is also to note that Courts have repeatedly emphasized the significance of involving independent*



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witnesses in NDPS cases. NDPS laws are stringent, with severe punishments for violations. Independent witnesses act as a check to prevent law enforcement from abusing their powers during seizures and searches.

7. Hence, all the Commissioners of Police in Cities and District Superintendents of Police including NIB CID are requested to ensure the involvement of independent, responsible witnesses during seizures under the NDPS Act in appropriate cases.

To

All the Commissioners of Police in Cities

All Superintendents of Police in Districts

The Superintendents of Police, Enforcement, Chennai Zone,  
Madurai Zone  
and NIB CID

Copy to

All Range Dy. Inspector Generals of Police.

The Inspector Generals of Police in Zones and Enforcement,  
Chennai.

The Addl. Director General of Police, Enforcement, Chennai.

The Addl. Director General of Police, Law & Order, Chennai.

18. In the case of ***Shafhi Mohammad vs. State of Himachal Pradesh*** reported in ***(2018) 2 SCC 801*** it has been held as follows:

9. We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in *Karnail Singh vs. State of Haryana* (2009) 8 SCC 539 noted that technology is an



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*important part in the system of police administration. It has also been noted in the decision quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation. By videography, crucial evidence can be captured and presented in a credible manner.*

*10. Thus we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the Centrally Driven Plan of Action prepared by the Committee and the timeline as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest.*

19. This Court expresses its hope that the investigating agency would follow the said notification in letter and spirit and scrupulously.



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**WEB COPY** 20. In the result, these Criminal Appeals stand dismissed with the following directions:

20.1. Investigating Agency shall Scrupulously follow the circular memorandum dated 15.05.2025 in R.C.No.C1/1523/Crime/2025

20.2. Investigating Agency shall scrupulously follow the direction issued by the Hon'ble Supreme Court in *Shafhi Mohammad Vs. State of Himachala Pradesh* reported in **2018 (2) SCC 801** and make video graph of entire recovery proceedings.

20.3. In the event of failure of the compliance of the above directions, the disciplinary authority is hereby directed to take necessary disciplinary proceedings within a period of one month from the date of the remand of the accused and complete the same within further period of two months thereafter.

20.4. It is also left open to the learned trial Judge to take necessary action under Section 59 of the NDPS Act 1985, against the search officer for the non-compliance of the said direction.

20.5. The conviction and sentence imposed against the appellant under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, by the learned District and Sessions Judge, Communal Clash Cases, Madurai, dated 11.07.2023, in



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C.C.No.326 of 2017, is hereby confirmed.

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20.6.Bail bond executed by the appellants shall stand cancelled.

-Consequently, connected miscellaneous petitions are closed.

25.10.2025

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

**To**

- 1.The District and Sessions Court  
(For Communal Clash Cases in Southern District), Madurai
- 2.The Inspector of Police,  
NIB CID,  
Theni
- 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*

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and  
Crl.M.P.(MD).Nos.15170 and 16859 of 2023

25.10.2025