



CRL.A(MD).Nos.836 of 2023 & 143 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	12.09.2025
Pronounced On	:	15.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.836 of 2023 & 143 of 2024

Robert Victor ... Appellant/Accused No.1
(In CRL.A(MD).No.836 of 2023)
Akil ... Appellant/Accused No.2
(In CRL.A(MD).No.143 of 2024)
Vs.

The State represented by the
The Inspector of Police,
Anna Nagar Police Station, Madurai.
(Crime No.1816 of 2020) ... Respondent/Complainant
(In both Appeals)

Common Prayer : These Criminal Appeals are filed under Section 374(2) of Cr.P.C., to call for the records pertaining to the judgment passed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.116 of 2021, dated 05.04.2023 and set aside the same.



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For Appellant : Mr.M.Pitchai Muthu
(In CRL.A(MD).No.836 of 2023)
: Mr.M.Karuppasamy Pandian
(In CRL.A(MD).No.143 of 2024)
For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor
(In both Appeals)

COMMON JUDGMENT

The appellants/Accused Nos.1 & 2 in C.C.No.116 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, have filed these appeals, challenging the following conviction and sentence passed against them on 05.04.2023, for the offence under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act and 29(1) r/w 20(b)(ii)(C) of NDPS Act 1985:

Rank of the accused	Offence under Section	Punishment
A1	8(C) r/w 20(b)(ii)(C) of the NDPS Act,	Undergo 10 years of Rigorous Imprisonment and to pay fine of Rs.1,00,000/- (Rupees One Lakh only), in default to undergo simple imprisonment of 12 months
A2	29(1) r/w 20(b)(ii)(C) of the NDPS Act, 1985	Undergo 10 years of Rigorous Imprisonment and to pay fine of Rs.1,00,000/- (Rupees One Lakh only), in default to undergo simple imprisonment of 12 months



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2.1. The brief facts of the case as follows:

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When P.W.5 was working as Inspector of Police, Anna Nagar Police Station, Madurai, he received a secret information from the informant on 23.10.2020, at 08.00 am about the illegal possession and transportation of ganja. P.W.5 reduced the same in writing under Ex.P.6 and informed the same to his Immediate Superior namely, Assistant Commissioner of Police (Law and Order), Madurai. Thereafter, at about 08.40 a.m, P.W.5 along with other police officials went to the spot with necessary equipment and mounted surveillance. At that time, they noticed a Innova Car bearing Reg.No.KL-01-AP-6659. The informant identified the appellant in C.A.No.836 of 2023, namely, Accused No.1. On seeing the police party, accused No.1 tried to escape from the scene of occurrence by turning his car. However, P.W.5 and his team surrounded the car and caught the first accused and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The first accused consented to conduct search by the officer himself and hence, P.W. 5 conducted search in the presence of P.W.1 and other police officers and found 106 pks, which were covered with brown colour polythene cover and also found ganja in the said pockets and took the weightment of entire



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contraband and took the sample of S1 and S2 by following the procedure of homogenic mixture and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the first accused. He also gave confession that he indulged in the transportation of ganja on behalf of the second accused and for such transportation, he used to receive money from him and the same was recorded by P.W.5. Thereafter, P.W.5 brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.1816 of 2020 for the offence under Sections 8(C) r/w 20(b)(ii)(C), 29(1), 25 of NDPS Act and prepared a detailed report under Section 57 of NDPS Act and sent to his immediate superior. Following the same, P.W.5 and produced the accused before the learned Magistrate, along with the recovered contraband and samples taken from the said contraband and requested to remand him. Thereafter, on 24.01.2021, he arrested the second accused. After completing all the formalities, the learned Judicial Magistrate remanded the appellants in judicial custody. Thereafter, P.W.5 conducted the investigation and filed the final report before the I Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.116 of 2021.



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2.2. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood for trial.

2.3. The prosecution, to prove the case examined P.W.1 to P.W.6 and exhibited 16 documents as Ex.P.1 to Ex.P.16 and produced 12 material objects as M.O.1 to M.O.12. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the defence, no one was examined as witness and no document was marked.

2.4. The learned trial Judge after considering the oral and documentary evidence, acquitted the appellants from the charge under Section 25 of NDPS Act and convicted the first accused for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and also convicted the second accused for the offence under Section 29(1) r/w 20(b)(ii)(C) of the



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NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act and Section 29(1) r/w 20(b)(ii)(C) of the NDPS Act.

3. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.

4.1. **Thiru.M.Pitchai Muthu**, the learned counsel for the appellant/A1 in Crl.A(MD)No.836 of 2023 would submit that in Ex.P.6, the place of occurrence was stated as '*Chittampatti Toll*', which is situated on Trichy – Madurai Road. But, search was made on Madurai Ring Road, which is situated 11 kilometer away from the Chittampatti Toll. Therefore, there is doubt over the prosecution case.

4.2. The learned counsel would further submit that the contents of nearly 106 bags were mixed together and the sample was taken in a homogeneous mixture and therefore, there is a violation of notification issued by the Central Government in Standing Order No.1/89, dated 13.06.1989.



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4.3. He would further submit that there was no compliance of Section 42 of the Act. The immediate superior officer has not made the endorsement for granting permission to conduct search. Apart from that, the document has been prepared in Tamil. Both the accused are living in State of Kerala. They did not know Tamil language and they only know Malayalam language. There was no specific mention that the document was explained in the Malayalam language. The police officers also stated that they did not know Malayalam language. In the said circumstances, the recovery and the other documents are concocted and hence, he seeks for acquittal.

4.4. He would further contend that the vehicle was not standing in the name of A1 and hence, there was no investigation in this aspect. Therefore, he submitted that since there was no proof of ownership of the vehicle, the learned trial Judge, acquitted A1 and A2 for the offence under Section 25 of the NDPS Act and therefore conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act also is not legally maintainable.

4.5. He would further contend that the entire seized property was produced with the delay of 96 days and there was no material to prove the



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safe custody.

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4.6. The learned counsel would further submit that there is non-compliance of Sections 42 and 57 of Act. Therefore, he seeks to set aside the conviction and sentence imposed by the learned trial Judge.

5.1. **Thiru.M.Karuppasamy Pandian**, the learned counsel for the appellant/A2 in Crl.A(MD).No.143 of 2024 would submit that except the confession of A1, no other material is available on record against A2.

5.2. The learned counsel for the appellant/A2 would further submit that admittedly no contraband was recovered from him.

5.3. The learned counsel for the appellant/A2 would also submit that the prosecution has not produced any call details records to prove conspiracy between A1 and A2.

5.4. The learned counsel for the appellant/A2 would further submit that since there was no evidence, the learned trial Judge, acquitted the accused under Section 25 of the NDPS Act. Hence, ownership of the



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vehicle was not proved. Therefore, without proof of the ownership of the vehicle involved in this occurrence, the conviction and sentence imposed against him under Section 29(1) r/w 20(b)(ii)(C) of the NDPS Act, is liable to be set aside.

5.5. Apart from that, the learned counsel would further submit that as held by the Hon'ble Supreme Court in the case of *Tofan singh Vs. State of Tamil Nadu* reported in **2021 14 SCC 1** judgment when there was no material except the alleged confession of the co-accused, the conviction and sentence is not legally maintainable. Even though, the Investigating Officer recovered the phones of both the appellants, he has not collected call detail records. Therefore, the second accused was falsely implicated in this case. Hence, he seeks for the acquittal.

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

6.1. Section 42 of the Act was duly complied. Upon perusal of the records, it is clear that the secret information was received by P.W.5 and the same was informed to P.W.6, the immediate superior under Ex.P.6. Therefore, the compliance of Section 42 of the Act, is clearly proved.



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6.2. After the arrest made by P.W.5, he prepared a detailed report under Section 57 of the Act and the same was also submitted to the immediate superior namely, P.W.6. P.W.6, in her evidence, clearly deposed about the receipt of information and also report under Section 57 of the Act. When both the witnesses were elaborately cross-examined, nothing was elicited to disbelieve their evidence and their evidence is cogent and trustworthy. Hence, the prosecution has clearly proved the compliance under Section 57 of the Act.

6.3. The submission made by the learned counsel for the appellant/A1 with regard to delay is concerned, delay in producing the contraband before the Special Court is not a material lapse, to acquit the appellants, when the entire contraband was produced before the learned Judicial Magistrate at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate and thereafter, the same was produced before the Special Court without any tampering of the seal.

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



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available on record and the precedents relied upon by them?

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

8. P.W.1, P.W.2 and P.W.5 visited the occurrence place on receipt of information from the informant on 23.10.2020, which was reduced in writing under Ex.P.6. It is true that in Ex.P.6, the information was that the accused was proceeding towards Chittampatti Toll at Madurai to Trichy National Highways along with contraband and thereafter, the informer identified the vehicle of A1 near Viraganur Ring Road situated in the same Highways i.e., outskirts of the Madurai city bye-pass road. Therefore, the said discrepancy is not material when the P.W.1 to P.W.3 and P.W.5 clearly deposed about the recovery made from the appellant in Crl.A(MD)No.836 of 2023 namely, A1. A1 came in a Innova Car bearing Reg.No.KL-01-AP-6659 and the same was identified by the informer. P.W.5 and other police officer nabbed him and recovered the huge quantity of contraband from the Car by following the procedure. The said evidence of all



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witnesses is cogent and inspires the confidence of this Court. Their testimony has no infirmity. The evidence is cogent. Their testimonies prove that *A1* came in the car along with the contraband. Thereafter, the recovered contraband and the sample was properly taken and also the entire remaining contraband was properly sealed and athatchi was prepared and A1 signed the athatchi and also all the material documents were prepared at the spot and the same was also sent to the Court on the date of the remand itself. Therefore, there is no infirmity in their evidence relating to the recovery of contraband. Except some discrepancies relating to the place i.e, '*Madurai Ring Road*' and the '*Chittampatti toll Gate*', nothing is available on record to disbelieve their evidence. It is true that in Ex.P.6, it is mentioned as Chittampatti toll Gate. Reading of the entire information reduced in writing under Ex.P.6, shows as follows:-

KL-01-AP-6659 வெள்ளை நிற இன்னோவா காரில்
திருச்சி To தூத்துக்குடி சாலையில் மேலூர் சிட்டம்பட்டியை
அடுத்து காரில் கஞ்சாவை வைத்து கடத்தி கேரளா செல்கிறார்
என்றும் என்னுடன் வந்தால் அவரையும் அந்த இன்னோவா
காரையும் அடையாளம் காட்டுவேன் என்று கூறியதை 08.05
மணிக்கு ...

9. From the above, the only inference is that he travelled on the Trichy to Thoothukudi Road and crossed the Chittampatti Toll Gate. Therefore, the contention that the place of information namely, '*Madurai*



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Ring Road' is not correct. The submission of the learned counsel for the appellant/A2 that the vehicle owner was not examined is concerned, in this case, conviction was only made under Section 20(ii)(b) r/w 29 of the NDPS Act and the accused were acquitted under Section 25 of the NDPS Act. Therefore, the ownership of the vehicle is not proved is immaterial.

10. The property was produced after 9 days from the initial remand made before the learned Judicial Magistrate. The said submission deserves to be rejected on the ground that the property even though produced beyond 9 days, seal was intact and there was no tampering of the seal. In the said circumstances, that contention of the learned counsel for the appellants is not accepted.

11. The contention made by the learned counsel for the appellants that the appellants knew only Malayalam Language and they did not know Tamil language and the contents of the statement was read over in Tamil and the same could have been understood by the accused and hence the preparation of document is illegal.



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12. The recovery was made and the same was witnessed by P.W.1 to P.W.3 & P.W.5. From the records, it is revealed that they know Tamil Language. Number of documents, were read over and explained in Tamil. In some of the documents, it was not mentioned so. That will not vitiate the entire trial and the accused had engaged their counsel and contested the case and cross examined the witnesses giving instructions to their counsel and participated in the trial knowing the proceedings and no material was placed to claim that they were not aware of the proceedings of the trial. Apart from that, he signed in the judgment copy in “Tamil” to acknowledge his receipt of impugned judgement. In view of the said circumstances, the contention of the learned counsel for the appellants that there was total infraction of Article 21 of the Constitution of India cannot be accepted.

13. As rightly argued by the learned Additional Public Prosecutor, P.W.6 clearly deposed about the compliance under Section 42 of the NDPS Act. Apart from that, Ex.P.6 clearly mentioned that the information was duly intimated to the superior namely, P.W.6. Therefore, there was strict compliance under Section 42 of the Act. The property was produced with delay of 9 days is not a material in this case when the evidence of P.W.1



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and P.W.2 is cogent and corroborated with each other. Apart from that, the seal was intact. Therefore, this Court is unable to accept this point also.

14. In result, the argument of the learned counsel for the appellant/A1 namely, **Thiru.M.Pitchai Muthu** in Crl.A(MD)No.836 of 2023 **deserves to be rejected.**

15. **Accordingly, Crl.A(MD)No.836 of 2023 stands dismissed** and the conviction and sentence imposed against A1 in C.C.No.116 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, dated 05.04.2023, is hereby confirmed.

15.1.The Bail bond executed by the appellant is hereby terminated.

15.2.The learned trial Judge is hereby directed to take steps to secure the appellant/accused No.1, and confine him in prison to undergo the remaining period of sentence of imprisonment imposed against him in C.C.No.116 of 2021 by the learned I Additional Special Judge for NDPS Act Cases, Madurai, dated 05.04.2023.

16. Now, to discuss the case of the appellant in Crl.A(MD)No.143 of 2024 namely, A2, this Court asked the learned Additional Public



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Prosecutor *whether any material is available against A2 except the confession of the co-accused?* The learned Additional Public Prosecutor would submit that not only the confession, other material circumstances clearly proved the involvement of the appellant. I.e., A2 used to help A1 both financially and arranging transport. This Court, to consider the said submission of the learned Additional Public Prosecutor perused the entire materials.

16. A2 was not present at the scene of occurrence. The cellphone of the both accused were recovered but no CDR report was filed to connect A2 with A1. No records were produced to prove that the appellant/Accused No.2 had money transaction with A1. No bank officials were examined to prove the money trail between A1 and A2. Apart from that, no material circumstances had been established to presume the conspiracy between A1 and A2. The Hon'ble Supreme Court in the case of Ajay Kumar Gupta vs. Union of India reported in 2024 (9) SCC 455 has considered Tofan Singh case and held that without any evidence of the appellant's participation in conspiracy conviction under section 29 of the Act, only on the basis of the confession of the co-accused cannot be sustained. Therefore, in the absence of any legal evidence except the retracted confession of A1, this



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Court is unable to concur with the conviction under Section 29(1) of the NDPS Act passed against the A2 by the learned Trial Judge in the impugned judgment.

17. The confession of the co-accused alone is not a ground to convict the appellant and the same was elaborately discussed by the Hon'ble Supreme Court in various judgments including the following judgments:

17.1 In the case of ***Surinder Kumar Khanna vs. Directorate of Revenue Intelligence*** reported in ***2018 (8) SCC 271***, it is held that,

“13. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court.”



17.2. In the case of ***Dipakbhai Jagdishchandra Patel vs, State of Gujarat*** reported in ***(2019)16 SCC 547***, it is held,

24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625] , taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625] , the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge. ”

18. Therefore, as rightly pointed out by the learned counsel for the appellant/A2 namely, Thiru.M.Karuppasamy pandian, in the case of the confession of the co-accused, on the basis of the above precedents the conviction is not legally maintainable. Therefore, this Court is inclined to set aside the conviction and sentence imposed against the appellant/A2 in Crl.A.(MD)No. 143 of 2022.



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19. In result, *the Criminal Appeal filed by the appellant/A2 in Crl.A(MD)No.143 of 2024 is allowed* in the following terms :-

i) The judgment passed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.116 of 2021, dated 05.04.2023, against A2 is hereby set aside.

ii) The appellant in Crl.A(MD)no.143 of 2024 is acquitted from all the charges in C.C.No.116 of 2021, dated 05.04.2023, framed against him, by the learned Sessions Judge, I Additional Special Court for NDPS Act Cases, Madurai.

iii) Fine amount if any paid by the appellant shall be refunded to the appellant forthwith.

iv) Bail bond executed by the appellants shall stand cancelled.

15.10.2025

NCC : Yes / No
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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,
Anna Nagar Police Station,
Madurai.
- 3.The Superintendent of Prison,
Central Prison, Madurai District.
- 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.

dss/sbn

Order made in
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15.10.2025