

CrI.A(MD) No.929 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved On	:	24.01.2025
Pronounced On	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.929 of 2023

Rasuldeen

... Appellant/Sole Accused

Vs.

The Superintendent of Customs
Airport, Madurai District,
O.S.No. 36/2013

... Respondent/Complainant

PRAYER: Criminal Appeal has been filed under Section 374(1) of Cr.P.C., to call for the records in C.C.No. 30 of 2014 dated 27.09.2023 on the file of the Learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the same by allowing this appeal.

For Appellant : Mr.M.Jegadeesh Pandian

For Respondent : Mr. C.Arul Vadivel @ Sekar
Special Public Prosecutor for Customs

JUDGMENT



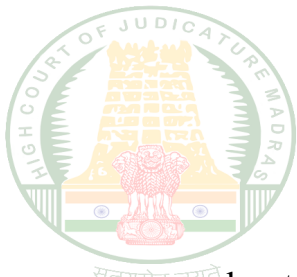
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The sole accused in CC.No.30 of 2014 on the file of the II Additional Special Court for NDPS Act Cases, Madurai has filed this Criminal Appeal, challenging the conviction and sentence imposed against him by virtue of the impugned judgment dated 03.11.2014. The conviction and sentence is as follows:

Conviction for the Offence under Sections	Sentence of Imprisonment
9(A) of NDPS Act r/w Rules 3, 4 and 6 of the NDPS Act, (Regulation of Controlled Substances) order 1993 and punishable under Section 25 (A) of NDPS Act, 1985	4 years RI and to pay a fine of Rs. 40,000/- in default to undergo 9 months S.I

2. According to the prosecution, Meenalochani, IRS, the Joint Commissioner of Customs, Madurai had received the information about the illegal transportation of the narcotic drugs and substances through Madurai Airport and hence, she directed PW5 to conduct search and recover the contraband. P.W.5 who received the said information on 03.07.2017 from his superior, went to Madurai airport along with PW1 and asked the staff of Airlines to check the list of passengers of Srilankan Airlines and found out the name of the appellant, and enquired with him



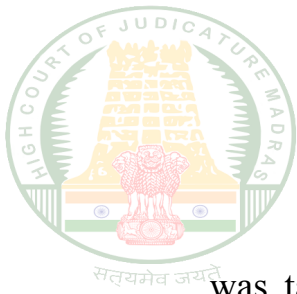
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about the smuggling of contraband.

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3. The further case of the prosecution is that they made search in the bags of the appellant and found possession of 7.299 Kilograms of Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride, which are controlled substances, in violation of Section 113 (d) 114, 135 of the Customs Act, 1962 and 25 (A) and 29 of the NDPS Act, 1985. They took the samples from each bag and also checked further for possession of any other contraband, and summoned the accused under Section 67 of the Customs Act, 1962 and obtained the statement and thereafter they arrested the accused and remanded him to judicial custody with the recovered contraband and other relevant documents.

4. PW5, continued the investigation and obtained the Chemical Analysis Report and filed the complaint under Section 103 of the Customs Act, 1962 for the offence under Section 9(A) of NDPS Act r/w Rules 3, 4 and 6 of (Regulation of Controlled Substances) order, 1993 and punishable under Sections 25(A), 29 of NDPS Act, 1985 before the II Additional Special Court for NDPS Act Cases, Madurai. The complaint



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was taken on file in CC.No.30 of 2014 and the Court summoned the accused and on the appearance of the accused, the copies of the records were furnished to him under Section 207 of Cr.PC.

5. The learned Trial Judge on perusal of the complaint, framed the necessary charges for the above said offences and explained to the appellant and the appellant pleaded not guilty and stood for trial.

6. The prosecution in order to prove its case had examined PW1 to 5 and marked Exs.P1 to 17 and produced material object M.O.1. Thereafter, the learned Trial Judge questioned the accused under Section 313 (1) (b) of Cr.PC by putting incriminating materials available against him and the accused denied the same as false and he stated that false case was foisted against him. The accused neither produced any document nor examined any witnesses on his side. The learned Trial Judge considering the material circumstances found that accused was guilty under Section 9(A) of NDPS Act r/w Rules 3, 4 and 6 of the NDPS Act, (Regulation of Controlled Substances) order 1993 and punishable under Section 25 (A) of NDPS Act, 1985 and recorded conviction and passed sentence against



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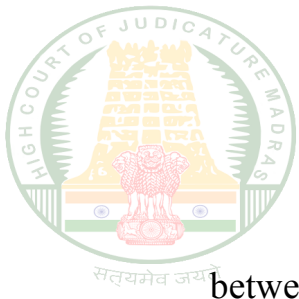
the accused as stated above. Challenging the same, the appellant preferred this appeal.

7. The learned counsel for the appellant made the following submissions:-

7.1. The secret information was received by Meenalochani, IRS, the Joint Commissioner of Customs, Madurai. She was not examined on the side of prosecution. In fact, no material was produced before the Court to show that she informed to her immediate superior and therefore, there is no compliance of Section 42 of the NDPS Act. Hence, the conviction and sentence passed against the appellant is not legally maintainable.

7.2. The learned Trial Judge has committed error in holding Section 42 was not applicable to the present case, which is a fundamental error committed by the learned Trial Judge, and therefore, the conviction and sentence is not legally maintainable.

7.3. The learned Trial Judge failed to consider the discrepancy



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between the evidence of PW1 and PW5, about the recovery of the contraband from the appellant. The evidence of PW2, the independent witness is not reliable evidence. Therefore, the learned Trial Judge has committed error in relying the evidence of PW2 and hence, he seeks for acquittal.

7.4. The learned counsel for the appellant also submitted that seizure was made at 04.20 pm, so it is impossible to nab the accused before 10 minutes. Normally, the boarding takes place half an hour before, therefore, the alleged discrepancy about the time of securing the accused creates suspicion of the recovery of the contraband. The learned counsel also submitted that he is the first time offender and he has no previous case and the recovered contraband is a controlled substance and it is used for medicinal purposes, and therefore, he seeks for reducing the sentence to the period already undergone.

8. The learned Special Public Prosecutor made the following submissions:-

8.1. The presence of the appellant in the Airport at Madurai, at the



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relevant point of time is proved through the recovery of the documents and the ownership of the bag in which the contraband was found, was also proved and the witnesses PW2 and 5, in unison have spoken about the recovery. The case of the prosecution is clearly proved.

8.2. In this case, Meenalochani, IRS, the Joint Commissioner of Customs, Madurai is the head of the department and there is no necessity to inform her immediate superior and therefore, the argument of the counsel for the appellant that there is no compliance of Section 42, is a misconceived one.

8.3. It is true that the learned Trial Judge has recorded a finding that Section 42 is not applicable. The said finding is also correct, since the recovery was made in the public place namely airport, therefore, there was no infirmity in the judgment passed by the learned Trial Judge finding that Section 42 has no application and Section 43 alone is applicable.



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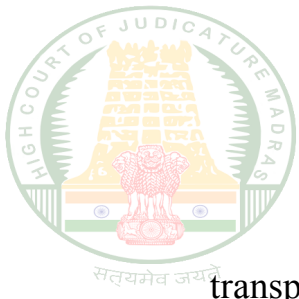
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8.4. The learned Senior Counsel also submitted that the alleged time discrepancy of 04.20 pm is immaterial when the witnesses were examined after many years and therefore, the normal discrepancy would have occurred. In these circumstances, he seeks for the confirmation of the conviction and sentence passed against the appellant under the charged offence. The learned senior counsel fairly accepted that there is no previous case against the appellant but in view of the possession of the huge commercial quantity of the controlled substances, he seeks to confirm the sentence.

9. This Court has considered the rival submissions advanced by either side and perused the records and also precedents relied upon by them and this Court had gone through the evidence, documents and considered the submissions made by both counsel on record.

10. Discussion on the finding of the learned trial Judge that Section 42 of the Act is not applicable to the present case :-

10.1. As per the Section 42 of the Act, if the empowered officer received the secret information about the illegal possession,



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transportation of narcotic drugs or psychotropic substance or controlled substance he is duty bound to reduce the said information in writing and shall send the same to his immediate superior within 72 hours. The Hon'ble Constitution Bench of the Supreme Court in the case of ***Karnail Singh v. State of Haryana***, reported in (2009) 8 SCC 539 has considered the said requirement and laid the following guidelines:-

“35.In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(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



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was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official 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



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delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.

10.2. It is true that in this case, the learned trial Judge has erroneously held that Section 42 of the Act is not applicable and Section 43 of the Act alone is applicable. The said finding is not correct. Plea of applicability of Section 42 of the Act is different from non-compliance of Section 42 of the Act. In this case, Section 42 of the Act is applicable and



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there was strict compliance under Section 42 of the Act i.e., 03.07.2013 at 15.50 Hrs, the Meenalochani, IRS, the Joint Commissioner of Customs, Madurai, received the information from her superior Additional Director of Revenue Intelligence namely Balaji Majumdar about the smuggling of contraband to Columbo and he immediately transmitted the information to Meenalochani, IRS, the Joint Commissioner of Customs, Madurai, and she in turn directed PW5 to go and search of the airport about the said accused. To prove the same, they produced Ex.P.9 and Ex.P.9 clearly speaks about the passing of the information. Since, the information emanated from the Director of the Revenue Intelligence, the requirement of the compliance of Section 42 of the Act is not material. Therefore, this Court is not inclined to accept the argument of learned counsel for the appellants that the prosecution has not complied the requirement of Section 42 of the Act.

11. The recovery of the contraband in the bag of the appellant is clearly proved through the cogent and trustworthy evidence of P.W.1 to P.W.5 that the contraband was recovered from the bag of the appellant. Neither the appellant's presence in the airport nor the ownership of the

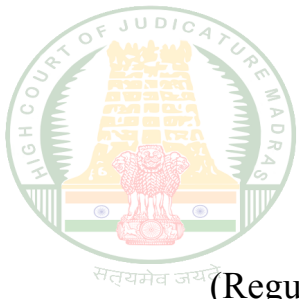


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bag is denied. To prove the same, they examined the airport authorities and also the relevant document has been marked. The appellant has also not denied the possession of the bag during questioning under Section 313 Cr.P.C., proceedings. The contraband was found sealed in nine ladies hand bags. The manner of keeping the contraband in the bag a circumstance to presume illegal transportation of the said contraband, even though the department suspected the presence of the '*amphetamine*' and the contraband answered for the presence of controlled substance namely Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride.

12. The Department properly took the samples and properly sealed and properly got Chemical Analysis Report and remaining contraband was properly sealed packed and produced before the Court and there was no dispute about the same. In view of the above circumstances, the prosecution proved the case against the appellant for the possession of 7.299 Kilograms of Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride, and his attempt to smuggle to Columbo through the Srilankan Airlines on 03.07.2017 and hence, the learned Trial Judge convicted him under Section 9(A) of NDPS Act r/w Rules 3, 4 and 6 of



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(Regulation of Controlled Substances) order 1993 and punishable under Section 25 (A) of NDPS Act, 1985. Therefore, there is no need to interfere with the judgment passed by the learned Trial Judge.

13. The appellant has no previous bad antecedents and considering the said fact and as he is the first time offender, this Court is inclined to reduce the sentence to the period of imprisonment already undergone by the accused and enhance the fine from Rs.40,000/- (Rupees Forty Thousand Only) to Rs.1,00,000/- (Rupees One Lakh) with default sentence of 9 months SI.

14. Accordingly, this criminal appeal is **partly allowed** in the following terms:

(i). The conviction of the learned Trial Judge and CC.No.30 of 2014 passed against the appellant under Section 9(A) r/w Rules 3, 4 and 6 of the NDPS Act, (Regulation of Controlled Substances) order 1993 and punishable under Section 25 (A) of NDPS Act, 1985 is confirmed. The sentence to undergo 4 years RI, is reduced to the period of imprisonment



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already undergone with a condition to pay a fine amount of Rs.1,00,000/- with default sentence of nine months.

(ii). The enhanced fine amount of Rs.60,000/- (Rupees Sixty Thousand Only) has to be paid by the appellant/sole accused within a period of one month from the date of receipt of copy of this order, otherwise the punishment imposed by the learned Trial Judge in the CC.No.30 of 2014 will stand restored automatically.

(iii). The bail bond executed by the appellant is terminated and the appellant is set at liberty, if his presence is not otherwise required in any other case.

15.05.2025

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

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K.K.RAMAKRISHNAN, J.

Nikhal

1.The I Additional Special Court for NDPS Act
Cases, Madurai

2.The Superintendent of Customs
Airport, Madurai District,
O.S.No. 36/2013

3.The Special Public Prosecutor for Customs
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Record Section (Criminal),
Madurai Bench of Madras High Court, Madurai.

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