



CrI.A.(MD).No.600 of 2019

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

CrI.A.(MD).Nos.600 of 2019

Vattepu Naresh

.. Appellant

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
NIBCID,
Theni.
(Crime No.76 of 2018)

.. Respondent

PRAYER: Criminal Appeal has been filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.366 of 2018, on the file of the learned Principal Special Court for E.C and NDPS Act cases, Madurai and set aside the judgment dated 23.10.2019.

For Appellant : Mr.P.Krishnaveni
Legal-aid-counsel

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



Crl.A.(MD).No.600 of 2019

JUDGEMENT

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The appellant who is the sole accused in C.C.No.366 of 2018 on the file of the Principal Special Court for E.C and NDPS Act Cases, Madurai, has filed this appeal before this Court challenging the following conviction and sentence imposed by the trial Court vide impugned judgment dated 23.10.2019:

<i>Accused</i>	<i>Under Section</i>	<i>Conviction</i>
Appellant/sole accused	Section 8(c) r/w 22(b)(ii) (c) of NDPS Act,1985 .	Undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs. 1,00,000/- in default 6 months SI

2.The appellant is said to have committed the offence under Sections 8(c) r/w 20(b)(ii)(C) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') for the alleged possession of 140 kg of Ganja. The Principal Special Court for NDPS Act Cases, Madurai, convicted the appellant in C.C.No. 366 of 2018 under Sections **8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985** as stated above. Challenging the same, the appellant has filed this criminal appeal.



Crl.A.(MD).No.600 of 2019

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

follows:

According to the prosecution, the appellant illegally transported Ganja in a Car bearing registration No.AP-10-TV-2470. On 19.05.2018, The Deputy Superintendent of Police/P.W.2 attached to the respondent unit received a secret information from the informant at about 06.30 hours., and the same was reduced into writing in the Genral Diary/Ex.P6 and forwarded to the higher official/P.W.3, and after obtaining necessary permission, he proceeded with his team to the occurrence place; along with the necessary equipments, after complying with the procedure under Section 42 of the NDPS Act, 1985. When P.W.2 and his team reached the occurrence place and involved in vehilce check up near Madhurapuri Electricity Sub Station on Periyakulam-Theni Main Road, the informer identified the Toyoto Etiyos car bearing Registration No.AP-10-TV-2470. The said car was stopped by the police team and P.W.2 introduced himself to the appellant and came to know that the accused/appellant did not know Tamil and his mother tongue was Telegu. Therefore, P.W.2 asked P.W.1 to translate who is conversant with Telegu. Thereafter, P.W.1 explained to the accused about his entitlement to be searched in the presence of the Gazetted Officer or a Judicial Magistrate.

Page 3/39



Crl.A.(MD).No.600 of 2019

P.W.2 after complying the procedures under Section 50 of the NDPS Act

1985 by obtaining his consent letter under Ex.P1, made a search of the vehicle and found 4 gunny bags with the contraband weighing of 25 kgs each on the back seat of the car and two gunny bags with the contraband weighing of 20 Kgs each on the back seat of the car totally 140 Kilograms of Ganja. The confession statement given by the accused was recorded by P.W.2. Thereafter, two samples of 25 grams each were taken, totally 12 samples were separately collected. The said samples were marked as S1 to S12 and remaining contraband and the said Toyota Etios car bearing registration No.AP-10-TV-2470 were seized in the presence of official witnesses. Thereafter, the accused was arrested and brought to the station and he registered a FIR/Ex.P8 in Crime No.76 of 2018 for the offences under Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act, 1985 and submitted a detailed report to P.W.3 under Section 57 of the NDPS Act. Thereafter, P.W.3 took up the case for further investigation and completed the investigation and filed the final report before the Special Court. The learned trial Judge had taken cognizance of the case in C.C.No.366 of 2018.

3.1. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on
Page 4/39



Crl.A.(MD).No.600 of 2019

perusal of records and on hearing both sides and on being satisfied that there existed a *prima facie* case against the accused, framed charges under Sections 8(c) r/w 20(b)(ii)(c) and 25 of the NDPS Act 1985 and the same was read over and explained to him and on being questioned, the accused denied the charges and pleaded not guilty and stood trial.

3.2.The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 13 material objects as M.O.1 and M.O.13.

3.3.When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against him, he denied the evidence as false and further stated that a false case was foisted against him. The accused neither produced any documents nor examined any witness on his side.

4.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.366 of 2018 was guilty and passed the conviction and sentence against the appellant as stated above.

The same has been challenged by the appellant by filing this Criminal
Page 5/39



Crl.A.(MD).No.600 of 2019

Appeal before this Court.

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5. On 11.09.2024, this Court passed the following order:

When the matter came up for hearing today, the learned Additional Public Prosecutor submitted that after suspending the sentence, the accused was released on bail and thereafter he is absconding.

2. In view of the above, this Court directs the trial Court viz., Principal Special Court for EC and NDPS Act Cases, Madurai, to issue committal warrant against the accused and secure him to serve the remaining period of sentence, pending the appeal proceedings.

3. List the matter on 25.10.2024 for reporting compliance.

6. Thereafter, on 04.11.2024, the learned counsel on record appearing for the appellant, submitted that there is no instructions from the appellant and this Court passed the following order:

The learned counsel for the appellant/accused would submit that there is no instruction.

2. According to the prosecution, by the order dated 18.03.2020, this Court, allowed the petition for suspending the sentence in Crl.M.P.(MD).No. 11155 of 2019 in Crl.A.(MD).No.600 of 2019. After suspending the sentence, the accused was released on bail and thereafter, he is absconding.

3. The respondent is present before this Court and would submit that they have taken steps to



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Crl.A.(MD).No.600 of 2019

secure the appellant/accused.

4.Considering the above submissions and also considering the fact that as per the conditional order passed by this Court, the appellant/accused has not appeared before the Court below regularly and now, he is absconding, this Court is inclined to cancel the order of suspending the sentence passed by this Court, in Crl.M.P.(MD).No.11155 of 2019 in Crl.A.(MD).No.600 of 2019, dated 18.03.2020.

5.Accordingly, the suspension of sentence, granted by this Court in Crl.M.P.(MD).No.11155 of 2019 in Crl.A.(MD).No.600 of 2019, dated 18.03.2020, is cancelled and a Non-Bailable Warrant is issued against the appellant/accused.

6.The respondent police is directed to secure the appellant/accused and produce him before this Court on 15.11.2024.

7.Post this matter on 15.11.2024.

7.On 15.11.2024, this Court passed the following order:

The learned Additional Public Prosecutor filed detailed report. In this report, paragraph No.5, it is stated that they furnished the details relating to the steps taken by them to execute NBW issued by this Court.

2.Considering the above, this Court is inclined to appoint legal-aid- counsel having experience of 20 years in the criminal side, on behalf of the appellant to adjudicate the case.

3.Hence, the Legal Services Committee is directed to appoint a legal aid counsel having



Crl.A.(MD).No.600 of 2019

experience of 20 years in the criminal side to appear on behalf of the appellant/accused.

4.The learned Additional Public Prosecutor is directed to take steps to secure the accused on or before 06.12.2024.

5.Registry is directed to serve papers upon the legal aid counsel and list the matter on 06.12.2024. Further, Registry is directed to delete the name of Mr.M.Jegadeesh Pandian, learned counsel.

8.Pursuant to the order passed by this Court dated 15.11.2024, the Legal Services Committee had appointed M/s.P.Krishnaveni, learned counsel to contest this case, on behalf of the appellant.

9.The learned counsel appearing for the appellant made the following submission:

There was a total non compliance of Section 42 of the NDPS Act, 1985 and there was no explanation as to how the computer print out of all the documents and also there is total non compliance of Section 57 of the NDPS Act, 1985. Further, she would submit that the learned trial Judge has acquitted the appellant for the offence under Section 25 of the NDPS Act, 1985 and convicted the appellant for the offence under Section 8(c) r/w 20(b)(ii)(c) of the NDPS Act, 1985, which is not legally maintainable. The learned counsel further submitted that the sample was



Crl.A.(MD).No.600 of 2019

not taken from each bag and 4 bags were recovered with different quantity, totally 140 kgs of Ganja, but the sample was not properly taken and hence, she seeks for acquittal. Further, there was no examination of independent witnesses and the appellant was hailing from Andhra Pradesh and all the details were recorded in Tamil and hence, there is a violation under Article 21 of the Constitution of India.

10.The learned Additional Public Prosecutor made the following submission:

The learned Additional Public Prosecutor, on instructions and on going through the record would submit that P.W.3 received the secret information and he properly recorded the same and forwarded to the superior officer and the superior officer also permitted him to conduct search and recover the contraband and after recording the same only, he went to the spot. Therefore, there is strict compliance of Section 42 of the NDPS Act, 1985. After the recovery, the sample was taken from 4 bags and the same was produced after the arrest of the accused before the immediate superior along with the report under Section 57 of the NDPS Act, 1985. Section 57 of the NDPS Act, 1985 also is strictly complied



Crl.A.(MD).No.600 of 2019

with and proper sample was also taken. He would further submit that the chemical analysis report was obtained and the trial was conducted and the remaining contraband was also produced before the trial Court and the same was properly considered by the learned trial Judge. Non explanation about the printer from which confession statement print was taken is not material and hence, the appellant has not disputed the confession given by him and also the recovery is followed by the confession in this case. The recovery was clearly deposed by P.W.1 and P.W.2 and there was no material contradiction between the evidence of P.W.1 and P.W.2. Therefore, once the possession of huge quantity of ganja was proved, presumption can be drawn under Section 54 and 34 of the NDPS Act, 1985.

11.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.



Crl.A.(MD).No.600 of 2019

12.The questions to be decided in this appeal is whether the prosecution proved the case against the appellant for the charge under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985, beyond reasonable doubt? and whether the judgment of the Court below is sustainable?

13.Discussion on compliance under Section 42 of the NDPS

Act:

P.W.2 received the secret information on 19.05.2018 at about 06.30 hours, about the illegal possession and transportation of the contraband by the appellant. P.W.2 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.3. P.W.3 also acknowledged the same **by appending his signature** and granted permission to conduct raid. **The said document was marked under Ex.P.6.** 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.2 clearly deposed about the above facts in cogent manner and P.W.3 also deposed about the acknowledgement of the information. Therefore, the contention



Crl.A.(MD).No.600 of 2019

of the learned counsel for the appellant that there was non-compliance of

Section 42 of the Act, is misconceived and the same is against the facts.

In this aspect, the prosecution clearly proved the compliance under Section 42 of the Act.

13.1.The learned counsel for the appellant would submit that the prosecution case itself is that the searching officer received the secret information and they made 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***.

13.2.It is true that the learned trial Judge upon consideration of the judgment of the Hon'ble three Judge Bench of the Hon'ble Supreme Court in ***SK.Raju Alias Abdul Haque Alias Jagga Vs, State of West Bengal*** reported in ***(2018) 9 SCC 708*** has held that the search was made in the public place and therefore, Section 43 of the Act alone is attracted



Crl.A.(MD).No.600 of 2019

and necessity to comply with the requirement under Section 42 will not arise.

13.3.The learned counsel for the appellant would submit that the Hon'ble Supreme Court in the ***S.K.Raju case*** on facts has held that Section 43 of the Act alone is applicable. In the ***S.K.Raju case***, even though information was received prior to the search and recovery of contraband from the accused, the information received was '*when he was walking along the Picnic Garden Road in front of Falguni Club*', and according to the Hon'ble Supreme Court, it was not a building, conveyance or enclosed place. Further according to the Hon'ble Supreme Court, the said recovery was made in the public place, which was accessible to the public and fell within the ambit of the phrase of the public place in the explanation to Section 43 of the Act. Therefore, the Hon'ble Supreme Court has held that Section 42 of the Act had no application. Further, according to the learned counsel for the appellant, the Hon'ble Constitution Bench judgment '***Karnail Singh***' was not placed in the above case. 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***



Crl.A.(MD).No.600 of 2019

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 in other words 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, she would submit that the non-compliance of Section 42 of the Act would vitiate the entire proceedings. Therefore, she seeks for acquittal. She also fairly placed the following judgments of the Hon'ble Supreme Court decided for and against him.

i) State of Punjab Vs. Balbir Singh reported in **(1994) 3 SCC 299**

ii) State of Pinjab Vs, Baldev Singh reported in **(1999) 6 SCC 172**

iii) State of Haryana Vs. Jarnail Singh and Others reported in **(2004) 5 SCC 188**

iv) Karnail Singh Vs, State of Haryana reported in **(2009) 3 SCC (Cri) 887**

v) Sukhdev Singh Vs, State of Haryana reported in **(2013) 2 SCC 212**

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

vii) S.K.Raju Alias Abdul Haque Alias Jagga Vs. State of West Bengal



Crl.A.(MD).No.600 of 2019

viii) *Mukesh Singh Vs, State (Narcotic Branch of Delhi* reported

in (2020) 10 SCC 120

ix) *Boota Singh and Others Vs. State of Haryand* reported in

(2021) 19 SCC 606

x) *Najmunisha Vs. State of Gujarat and Another* reported in

2024(1) MWN (Cr.) 481 (SC)

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

SCC 358

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

13.5. 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.



Crl.A.(MD).No.600 of 2019

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

13.7. As per the Section 42 of the Act, if the 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 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



Crl.A.(MD).No.600 of 2019

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 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



Crl.A.(MD).No.600 of 2019

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 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.



Crl.A.(MD).No.600 of 2019

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.”

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

13.9.From the reading of Section 43 of the Act, it is clear that when the officers while on patrol duty, make a chance recovery 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 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



Crl.A.(MD).No.600 of 2019

case of their reason to believe that the narcotic drugs or psychotropic substance or controlled substance, had been possessed, transported, concealed etc., They are not acting on the basis of the earlier information. But, in the case of the Section 42, the searching officers act 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 has been violated, on the basis of the available evidence in this case.

13.10. In this case, P.W.2 received the secret information about the illegal possession and transportation of the contraband, and he reduced the same in writing. He reported the said information to his Immediate



Crl.A.(MD).No.600 of 2019

Superior. The Immediate Superior also acknowledged the same. To prove

the same, the prosecution produced Ex.P.7. From the perusal of Ex.P.7 and appreciation of evidence of P.W.3, this Court finds the compliance of mandatory requirements of Section 42 of the Act. The learned counsel for the appellant heavily relied on the discrepancies relating to the recording of information and reducing the same in writing and reporting the said information reduced in writing to his superior officer to disbelieve the case of the prosecution about the compliance of the procedure stated in Section 42 of the Act. 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 are also 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 witness P.W.2 and the official witnesses in this aspect. When the document Ex.P7 is produced and marked without objection and the same was proved through the examination of author of the document and the signature of the officer found in the document is not disputed and the



Crl.A.(MD).No.600 of 2019

same reached to the Court within reasonable time, the non-examination of the Immediate Superior to depose about the said document is not a material circumstance to disbelieve the case of the compliance of Section 42 of the Act. When the Immediate Superior officer comes into the box and deposes about the receipt of the information, there is no further requirement 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, then it is 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 police officers and examination is conducted after a lapse of several months and we cannot expect them to 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, procedure on the basis of the



Crl.A.(MD).No.600 of 2019

evidence of P.W.2, P.W.3 and the official witnesses and Ex.P.7. 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.

14. Compliance of Section 57 of the NDPS Act:

14.1.The learned counsel for the appellant submitted that P.W.2 received the secret information and after completing the formalities and all the procedures and arrested the accused. Thereafter, registered FIR against the accused and also prepared detailed report under Section 57 of the NDPS Act, 1985 and sent the same belatedly to P.W.3.

14.2.Even otherwise as per the judgment of the Hon'ble Supreme Court, non-compliance of the Section 57 of the NDPS Act does not vitiate the prosecution case, and the same is fortified by the following judgment reported in ***(2021) 14 SCC 334*** in the case of ***Gurmail Chand v. State of Punjab***

10. Insofar as submissions on the basis of Section 57 of the NDPS Act are concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two



WEB COPY



Crl.A.(MD).No.600 of 2019

days, the entire proceeding shall be vitiated. “The provision has been held to be directory and to be complied with but merely not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding.” A three-Judge Bench of this Court in *Sajan Abraham v. State of Kerala* [*Sajan Abraham v. State of Kerala*, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217] has held that “non-compliance of Section 57 would not vitiate the prosecution case.” In para 12 the following was laid down : (SCC pp. 696-97)

12. The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence, the entire case is vitiated. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW 5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext. P-9 shows that the copies of the FIR along with



Crl.A.(MD).No.600 of 2019

other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW 5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW 5 has sent all the relevant material to his superior officer immediately. Thus, we do not find any violation of Section 57 of the Act.”

14.3. Hence, any non-compliance of the Sections 57, 52 & 55 of the NDPS Act, 1985 does not affect the prosecution case, when the entire contraband and the samples were all produced before the Court along with the accused on the date of the occurrence itself.

14.4. P.W.3 is the immediate Superior of P.W.2. P.W.3 received the custody of the arrested accused and the sample along with the remaining contraband on the date of occurrence itself. He produced the remaining



Crl.A.(MD).No.600 of 2019

contraband and the sample before the learned Judicial Magistrate at the time of remand of the accused. The same was also received by the learned Judicial Magistrate on the date of occurrence itself. As per Section 57 of the NDPS Act, 1985, a report is to be submitted within 48 hours to the immediate superior. It is not a requirement of the Act that the said report should reach the Court immediately. The delay in reaching of the document to the Court is not fatal to the prosecution when the contraband and the sample were produced on the same day. Further, the information was furnished to P.W.3 within 48 hours. In Ex.P7, there is an endorsement that he received the same on the same day. In the said circumstances, the said contention of non-compliance of Section 57 of the NDPS Act, 1985, is not accepted.

15. Delay in producing the contraband:

The learned counsel for the appellant submitted that the delay in producing the contraband before the Special Court is fatal to the prosecution. In this case, P.W.3 produced the entire contraband and samples under Form 95 on the date of occurrence itself before the learned Judicial Magistrate. The learned Judicial Magistrate verified the same and directed to produce it before the Special Court. P.W.3 produced the



Crl.A.(MD).No.600 of 2019

same before the Special Court with delay. The said delay is immaterial when the contraband and the samples were produced before the Special Court with seal. It is not the case of the appellant that the seal was tampered. In the said circumstances, the said delay is not fatal. The Hon'ble Supreme Court in the judgment of ***Hardip Singh v. State of Punjab***, reported in ***(2008) 8 SCC 557*** has held that delay in producing the contraband and samples are not material when the samples are produced with seal intact. The relevant paragraphs are as follows:

“17. The then Station House Officer, Inspector Baldev Singh, who was examined as PW 1, was posted at Police Station Ajnala on the date of occurrence. He received the said samples of opium along with case material, being produced before him by PW 5. It has come on evidence that Inspector Baldev Singh kept the entire case property with him till it was deposited in the office of the Chemical Examiner, Amritsar on 30-9-1997 through ASI Surinder Singh (PW 3). It has also come on evidence that till the date the parcels of sample were received by the chemical examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by



Crl.A.(MD).No.600 of 2019

the analyst for chemical examination contained the same opium which was recovered from the possession of the appellant. In that view of the matter, delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant. The aforesaid contention, therefore, also stands rejected.

20. In Ouseph v. State of Kerala [(2004) 10 SCC 647 : 2005 SCC (Cri) 595] it was held by this Court that under the provisions of Section 55 of the Act, the requirement may not be mandatory. However, in that case, in view of peculiar facts of the case and as the contraband articles were kept in totally unsealed condition for near about two months it was held that the same creates doubt."

16. Discussion on the proof of ownership of the vehicle:

Though it was vehemently contended by the learned counsel for the appellant regarding the ownership of the vehicle, the same is not material as held by the Hon'ble Supreme Court in the case of **Rizwan Khan Vs. State of Chattisgarh** it has been observed 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



Crl.A.(MD).No.600 of 2019

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 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".

16.1. In view of the above, it is clear that the respondent need not establish ownership of the vehicle and the ownership of the Car itself is not going to be determined, what is to be determined by the Court is whether the contraband is ganja within a definition of Section 2 of the NDPS Act and what is the quantity of ganja that has been seized.



Crl.A.(MD).No.600 of 2019

17. Non-examination of the independent witnesses:

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The learned counsel for appellans submitted that the occurrence place was a busy public place ie., near E.B.Sub Station on PeriyaKulam – Theni Main Road. Therefore, non-examination of the independent witnesses creates doubt over the recovery. The said submission cannot be accepted for the reason that it is the specific case of the P.W.2 that he requested independent persons to witness the recovery but they refused. According to the prosecution, two accused were caught by the police and in the said tensed scenario, it is common that no independent witnesses would come forward to witness the recovery. Apart from that the Hon'ble Constitution Bench of the Supreme Court in the Mukesh Singh case has held that the non-examination of the independent witnesses is not a ground to disbelieve the evidence of the police witnesses when their evidence is cogent and trustworthy without any infirmity. In this case, this Court does not find any infirmity in the material portion of the evidence of the witnesses, namely, P.W.2, P.W.3 and other official witnesses relating to the recovery of the contraband.

18. The learned counsel for the appellants made the detailed submission that the recovered contraband was without flowering tops.

Page 30/39



Crl.A.(MD).No.600 of 2019

Therefore, the case does not come under the category of the commercial quantity. In this regard, 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 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.



Crl.A.(MD).No.600 of 2019

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 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 'கூதிர்கள்' and therefore, the same includes flowering and fruiting tops. Hence, the learned Additional Public Prosecutor submitted that the recovered ganja with leaves, seeds, 'கூதிர்கள்' would come under the definition of*



Crl.A.(MD).No.600 of 2019

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 judgment of 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.”

19. 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 140 kg which is whooping commercial quantity as per the NDPS Act.



Crl.A.(MD).No.600 of 2019

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20. 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.

21. Discussion on the plea regarding the language of the accused:

Mrs. P. Krishnaveni, learned Legal Aid Counsel appearing for the appellant, contended that all the records in this case were in Tamil, whereas the appellant hails from Telangana and knows only Telugu. It was her submission that the appellant did not understand Tamil, and therefore, the recovery proceedings and other proceedings of the trial were not in accordance with law, as he was not provided with translated versions of documents in Telugu. According to her, this has vitiated the right of the appellant to a fair trial.



Crl.A.(MD).No.600 of 2019

21.1.To consider the above submission, this Court has carefully perused the entire records. From the records, it is evident that the appellant understood the Tamil language and also made replies in Tamil. The prosecution has specifically stated that the searching team included a Telugu-knowing Constable (P.W.1), who explained the proceedings in Tamil, which the appellant understood. The same has been duly recorded in all documents. P.W.1 also deposed before the Court that he explained the contents in Tamil and that the accused understood them. There was no cross-examination on this aspect.

21.2. Further, no prejudice has been pleaded or established by the appellant on account of the language issue. The evidence on record shows that the appellants understood the framed charges and was able to instruct his learned counsel regarding the defence. Cross-examination was also effectively conducted on behalf of the accused. It is also revealed that the appellant understood both Tamil and English.

21.3. The learned Trial Judge, after recording the statement under Section 313 Cr.P.C., specifically noted that the appellant understood Tamil and made appropriate replies. In such circumstances, the



Crl.A.(MD).No.600 of 2019

contention of the appellant that his right to fair trial was infringed on the ground of non-supply of translated documents in Telugu is devoid of merit and stands rejected. No such argument was made during the course of the trial regarding the same.

22.Conclusion:-

From the evidence, it is apparent that P.W.2 received secret information and the said secret information received was duly reduced in 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 duly packed separately. The said samples and the remaining contraband were produced before the learned Judicial Magistrate on the date of occurrence itself. The learned Judicial Magistrate verified the same. The recovered contraband of 140kgs of Ganja is a commercial quantity i.e., more than 20 Kg. The said samples were subjected to analysis and the Report confirmed the presence of “cannabis”.



Crl.A.(MD).No.600 of 2019

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22.1.The entire seized contraband namely recovered Ganja was produced before the Court and marked without any dispute as M.O.1 to M.O.8. The prosecution witnesses viz., P.W.1, P.W.2 and PW.3, 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 appellant transported 140kgs of Ganja in Toyoto Etios and the same was in his conscious possession. The appellant 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 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. Thus, the questions are answered against the appellant. Therefore, the appeal deserve to be dismissed.



Crl.A.(MD).No.600 of 2019

23. In the result,

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23.1 The Criminal Appeal is dismissed and the judgment passed by the Principal Special Court for NDPS Act, cases, Madurai in C.C.No.366 of 2018 dated 23.10.2019 is hereby confirmed.

23.2 The bail bond executed by the appellant are hereby cancelled.

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

15.10.2025

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

To

- 1.The learned Principal Judge,
Principal Special Court for EC and NDPS Act cases, Madurai.
- 2.The Inspector of Police,
NIBCID, Theni.
- 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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CrI.A.(MD).No.600 of 2019

K.K.RAMAKRISHNAN, J.

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CrI.A.(MD).No.600 of 2019

15.10.2025