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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	**:**	**24.01.2025**
Pronounced On	**:**	**15.05.2025**

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.961 & 1036 of 2023

Harikumar ... Appellant/Accused No.1
(in Crl.A.(MD).No.961 of 2023)

Eswara Rao ... Appellant/Accused No.2
(in Crl.A.(MD).No.1036 of 2023)

Vs.

State through,
The Inspector of Police,
Karimedu Police Station,
Madurai District.
(In Crime No.1265 of 2021)

... Respondent/Complainant
(In both appeals)

COMMON PRAYER: Criminal Appeals have been filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.647 of 2021 dated 27.09.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, and set aside the same.

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For appellant : Mr.N.Manimaran
(in Crl.A.(MD).No.961 of 2023)

: Mr.M.Jegadeesh Pandian
(in Crl.A.(MD).No.1036 of 2023)

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
(In both appeals)

COMMOM JUDGMENT

The appellants/A1 & A2 in C.C.No.647 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, have filed these Criminal Appeals before this Court challenging the conviction and sentence imposed against them in the impugned judgment dated 27.09.2023.

2. Since these two appeals are arising out of the same occurrence and filed against the order of conviction made in C.C.No.647 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, these two appeals are taken up together for hearing and disposed of by way of this common judgment.

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3.According to the prosecution, on 01.11.2021 at 10.15 a.m near Karimedu Fish Market, New Jail Road, Madurai, the accused were found in possession of 35 kg of ganja in three bags and trafficking the same in a Maruthi Suzuki Alto-800 car bearing Reg.No.TN-AP-31-DB-1400 belonging to A2. Therefore, the respondent police filed final report against them. The trial Court convicted the appellants by the impugned judgment with the following conviction and sentence:-

Appellants Rank	*Conviction for the Offence under Section*	*Sentence of Imprisonment*
A1 & A2	8(c) r/w 20(b)(ii)(B) of the NDPS Act	10 year R.I each and to pay a fine of Rs.1,00,000/- (Rupees One Laks Only) each in default to undergo 12 months S.I

4. **Case of the prosecution in brief**: -

4.1. On 01.11.2021 at 09.00 p.m, when P.W.2 was working as Sub-Inspector of Police, Karimedu Police Station, Madurai, received the secret information about the illegal possession and trafficking of the huge quantity of Ganja by the appellants. He recorded the said information in the General Diary and reduced the same in writing under Ex.P.9 and sent

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it to his immediate superior/P.W.3 and obtained permission. Thereafter, P.W.2 proceeded to the occurrence place along with constable and other police men namely, Karimedu Fish Market, near New Jail Road, Madurai and mounded surveillance. At that time, the informant identified the Maruthi Suzuki Alto-800 car bearing Reg.No.TN-AP-31-DB-1400. Thereafter, P.W.2 intercepted the car. On seeing the police party, the appellants tried to escape from the place of the occurrence. However, P.W.2 and the police officers were able to nab them. P.W.2 introduced himself as police officer and he informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct search by the officer himself and hence, P.W.2 conducted search and found two bags (each containing 10 kg of ganja) under the back side seat of the car and found one bag (containing 15 kg of ganja) in the dicky of the car and totally there was 35 kg of ganja in the said bags and made weightment of entire contraband and took the samples S1 and S2 (each 50 gram) from the said bags and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the appellants. The

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appellants also gave a confessions and the same were recorded by P.W.2. P.W.2 brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.1265 of 2021 for the offence under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act and prepared a detailed report under Section 57 of NDPS Act. Following the same, P.W.2 handed over the custody of the accused to P.W.3 along with the contraband, sample and report under Section 57 of the Act. P.W.3 produced the accused before the learned Judicial Magistrate along with the recovered contraband and samples taken from the said contraband and requested to remand them. After completing all the formalities, the learned Judicial Magistrate remanded the appellant in judicial custody. Thereafter, P.W.3 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.278 of 2021.

4.2. After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that

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there existed a *prima facie* case against the appellants, framed the necessary charges and the same was read over and explained to them and on being questioned, the appellants denied the charges and pleaded not guilty and stood for trial.

4.3. The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 17 documents as Ex.P.1 to Ex.P.17 and marked 9 material objects as M.O.1 to M.O.9.

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

4.5. The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.278 of 2021 were guilty and passed the conviction and sentence against the appellants as stated above.

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5. Challenging the same, these appeals have been filed.

6. **Thiru.N.Manimaran,** learned counsel for the appellant in Crl.A(MD)No.961 of 2023 and **Thiru.M.Jegadeesh Pandian**, learned counsel for the appellant in Crl.A(MD)No.1036 of 2023 have jointly made the following submissions:-

6.1.According to the prosecution, P.W.2 received a secret information and sent the same to his Immediate superior and thereafter, he proceeded to the spot and made a search and recovered the contraband. According to P.W.2, he received the secret information and made entry in the General Diary and the same was not produced and only Ex.P.9 was produced with delay. Therefore, there was doubt over the compliance of Section 42 of the Act. There were discrepancies between the testimony of P.W.1 and P.W.2 about the receipt of the information. Therefore, there was non-compliance of the mandatory procedure stated in the Section 42 of the Act.

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6.2. According to P.W.2, crime number was mentioned in the samples S1 and S2 and the remaining contraband before registration of FIR and it creates doubt over the recovery.

6.3. All the documents are typed one and there was no explanation where they were typed.

6.4. A1 hails from the State of Kerala and he does not know Tamil language. He knows only Malayalam language. Hence, the entire recovery procedure without translator is not admissible.

6.5. There were 9 days delay in sending sample to the lab. In view of the above circumstances, they seek for acquittal.

6.6. The learned counsel for the appellants made a request before this Court that since the appellants are unable to pay the fine amount, this Court may reduce the default sentence.

6.7. When the final report was filed under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS, charge was framed only for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS. Even though no conviction was passed under Sections 25 and 29 of the Act, discussion has been made

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about Sections 25 and 29 of the Act, which shows non application of mind on the part of the learned trial Judge.

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

7.1. Presence of crime number in the samples and the remaining contraband has already been adressed by this Court in number of cases. It is being mentioned on the said MOs, only to show that the property belonged to the particular crime number. It is not the case of the appellants that the same was forged.

7.2. Apart from that, the delay is not material when the seal was intact and there was no question during cross-examinaion that the presence of the crime number has caused prejudice to the appellants.

7.3. When the recovery was clearly proved through the cogent and trustworty evidence of P.W.1 and P.W.2, the case of the appellants that there was delay in sending the sample cannot be accepted.

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7.4. Even though the appellants have no knowledge of writing tamil language, they have working knowledge to understand the same. Hence, they conducted the trial through their Advocates and also they can understand the language of Tamil and hence, no projudice was caused to the appellants. There is a specific answer given by P.W.2 that they know Tamil language and hence, there is no necessity for translation through translator in their mother tongue.

7.5. Sofar as taking of print out is concerned, it is not material when the evidence of P.W.1 and P.W.2 is cogent and trustworthy relating to the recovery.

7.6. All the documents and recovered contraband were produced at the time of remand itself without any delay. In all aspects, the prosecution clearly proved the case through the evidence and contemporaneous documents. Therefore, he prayed for dismissal of the appeals.

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

9. The question that arises for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellants and the learned trial Judge's conviction and sentence imposed against the appellants can be sustained or not*?

10. **Discussion on non-compliance of Section 42 of the Act** :-

10.1. The learned counsel for the appellants would submit that the prosecution case itself is that the searching officer received the secret information and he made the search, recovery and arrest. The learned trial Judge is not correct in convicting the appellants without considering his specific plea that the non-compliance of the mandatory procedure under Section 42 of the Act would affect the case of the prosecution as per the principle laid down by the Hon'ble Constitution Bench of Supreme

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Court in ***Karnail Singh Vs, State of Haryana*** reported in ***(2009) 3 SCC (Crl.) 887.*** The learned Additional Public Prosecutor countered the same by placing reliance on the evidence of P.W.1 and P.W.2 and Ex.P.9.

10.2. Section 41(1) of the NDPS Act empowered the jurisdictional learned Judicial Magistrate to issue warrant for arrest of person or for the search of any building, conveyance or place to the 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.

10.3. 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.

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10.4. 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.

10.5. As per the Section 42 of the Act, if the empowered officer 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:-

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

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

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

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superior.

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

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

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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.

10.6. From the above precedent of the Hon'ble Supreme Court, it is clear that once the officer received the secret information and proceed 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.

10.7. In this case, P.W.1 received the secret information on 01.11.2021 at 09.00 p.m and he recorded the same in General Diary and reduced it in writing under Ex.P.9 and informed P.W3. P.W.3 acknowledged the same and deposed that he received the information and asked to proceed for search. The said evidence is cogent and trustworthy and the content of Ex.P.9 is as follows:-

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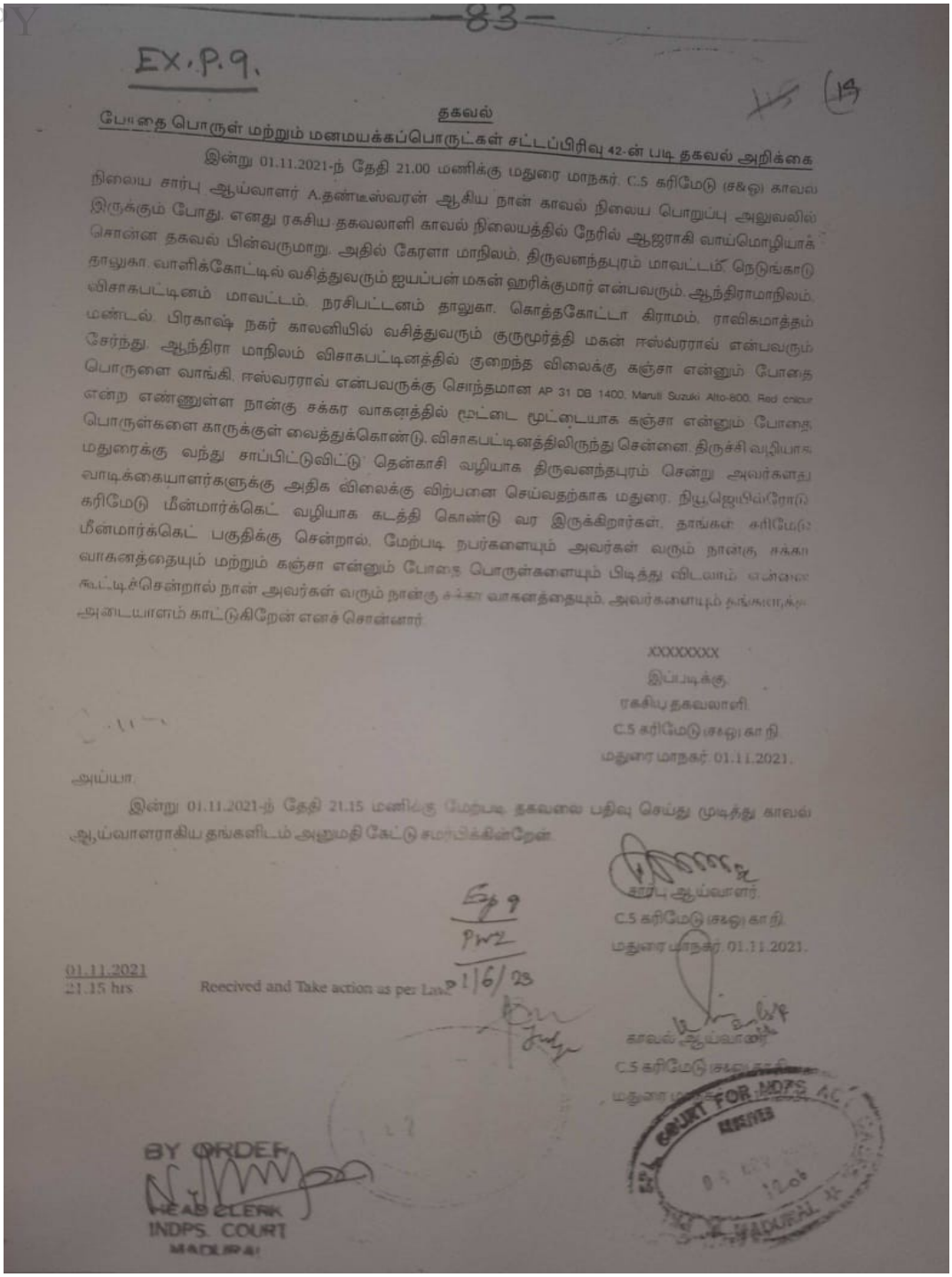

EX.P.9.

தகவல்

போதை பொருள் மற்றும் மனமயக்கப்பொருட்கள் சட்டப்பிரிவு 42-ன் படி தகவல் அறிக்கை

இன்று 01.11.2021-ந் தேதி 21.00 மணிக்கு மதுரை மாநகர், C.5 கரிமேடு (சுக்ரு) காவல் நிலைய சார்பு ஆய்வாளர் A.தண்டீஸ்வரன் ஆகிய நான் காவல் நிலைய பொறுப்பு அலுவலில் இருக்கும் போது, எனது ரகசிய தகவலாளி காவல் நிலையத்தில் நேரில் ஆஜராகி வாய்மொழியாக் சொன்ன தகவல் பின்வருமாறு. அதில் கேரளா மாநிலம், திருவனந்தபுரம் மாவட்டம், நெடுங்காடு தாலுகா, வாளிக்கோட்டில் வசித்துவரும் ஐயப்பன் மகன் ஹரிக்குமார் என்பவரும், ஆந்திராமாநிலம், விசாகபட்டினம் மாவட்டம், நரசிபட்டனம் தாலுகா, கொத்தகோட்டா கிராமம், ராவிகமாத்தம் மண்டல், பிரகாஷ் நகர் காலனியில் வசித்துவரும் குருமூர்த்தி மகன் ஈஸ்வரராவ் என்பவரும் சேர்ந்து, ஆந்திரா மாநிலம் விசாகபட்டினத்தில் குறைந்த விலைக்கு கஞ்சா என்னும் போதை பொருளை வாங்கி, ஈஸ்வரராவ் என்பவருக்கு சொந்தமான AP 31 DB 1400, Maruti Suzuki Alto-800, Red colour என்ற எண்ணுள்ள நான்கு சக்கர வாகனத்தில் மூட்டை மூட்டையாக கஞ்சா என்னும் போதை பொருள்களை காருக்குள் வைத்துக்கொண்டு, விசாகபட்டினத்திலிருந்து சென்னை திருச்சி வழியாக மதுரைக்கு வந்து சாப்பிட்டுவிட்டு தென்காசி வழியாக திருவனந்தபுரம் சென்று அவர்களது வாடிக்கையாளர்களுக்கு அதிக விலைக்கு விற்பனை செய்வதற்காக மதுரை, நியூஜெயில்ரோடு, கரிமேடு மீன்மார்க்கெட் வழியாக கடத்தி கொண்டு வர இருக்கிறார்கள். தாங்கள் கரிமேடு மீனமார்க்கெட் பகுதிக்கு சென்றால், மேற்படி நபர்களையும் அவர்கள் வரும் நான்கு சக்கர வாகனத்தையும் மற்றும் கஞ்சா என்னும் போதை பொருள்களையும் பிடித்து விடலாம் என்னை கூட்டிச்சென்றால் நான் அவர்கள் வரும் நான்கு சக்கர வாகனத்தையும், அவர்களையும் தங்களுக்கு அடையாளம் காட்டுகிறேன் எனச் சொன்னார்.

xxxxxxxx
இப்படிக்கு
ரகசிய தகவலாளி
C.5 கரிமேடு (சுக்ரு) கார்.
மதுரை மாநகர் 01.11.2021.

அய்யா,

இன்று 01.11.2021-ந் தேதி 21.15 மணிக்கு மேற்படி தகவலை பதிவு செய்து முடித்து காவல் ஆய்வாளராகிய தங்களிடம் அனுமதி கேட்டு சமர்ப்பிக்கின்றேன்.

சார்பு ஆய்வாளர்
C.5 கரிமேடு (சுக்ரு) கார்.
மதுரை மாநகர் 01.11.2021.

Ex 9
PW2
1/6/23

01.11.2021
21.15 hrs

Received and Take action as per Law

காவல் ஆய்வாளர்
C.5 கரிமேடு (சுக்ரு) கார்.
மதுரை மாநகர்

BY ORDER
HEAD CLERK
INDPS. COURT
MADURAI

COURT FOR NDPS ACT
MADURAI

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10.8. P.W.2 received the secret information and duly informed the same to P.W.3. P.W.3 acknowledged the same and Ex.P.9 was prepared in accordance with law and it contains the receipt of information by P.W.3 and hence, the contention of the learned counsel for the appellants that there was no compliance under Section 42 of the Act is not accepted.

11. **Discussion on delay in sending sample**:-

11.1. According to the appellants, there was 9 days delay in sending sample to the lab. The contraband was recovered on 01.11.2021. The sample was taken on 01.11.2021 and the same was produced before the learned Judicial Magistrate on 02.11.2021. The sample was sent to the lab on 10.11.2021. In the sample report, it is specifically stated that seal was intact. Therefore, the argument of the learned counsel for the appellants to disbelieve the recovery on account of the delay in producing the contraband before the FSL lab cannot be accepted and the same is fortified by following paragraph of the judgment of the Hon'ble Supreme Court:-

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11.2. ***Hardip Singh Vs. State of Punjab*** reported in ***(2008) SCC 557:-***

> *"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 till 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."*

11.3. ***State of Rajasthan Vs. Sahiram*** *reported in* ***2019 10 SCC 649***

> *"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. **Mentioning of the crime number in recovery mahazar, arrest memo and label of the sample :-**

12.1. The learned counsel for the appellants would submit that the mentioning of the crime number in the recovery mahazar, arrest memo and label of the sample creates suspicion about the recovery of the

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contraband in the occurrence place and they produced the judgment of this court in ***Thangapandi and others Vs. The Inspector of Police (L&O)*** reported in ***AIR OnLine 2018 MAD 1132.***

12.2. The learned Additional Public Prosecutor would submit that the most of the recovery was made on the basis of the receipt of the secret information. Therefore, the searching officer had knowledge about the last crime number of the particular police station. Further, on the label it is necessary to mention the crime number so as to make the proper identification of the said materials that they belonged to the said case. Therefore, the criminal rules of practice demands the mentioning of the crime number on the label of the material object. Hence, mentioning of the crime number can not be treated as a circumstance to treat the recovery with suspicions eye. He also relied the judgment of the same learned judge in the different cases with finding that mentioning of the crime number need not necessarily affect the testimony of the recovery witness.

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12.3. This court considered the said submission of the both learned counsel for the appellants and learned Additional Public Prosecutor and also the relevant precedent on the said aspect.

12.4. As per the criminal rules of practice framed by the Hon'ble High Court, Madras, it is duty of the Investigating Agency to affix the crime number on the material object in order to keep safe custody of the property in the property room of the trial court and also for proper identification of the material object that it belonged to the corresponding crime number. The labelling of the crime number on the material object might have been written subsequently at the time of the remand of the accused. Further, in most of the cases, the search was made on the basis of prior information received as per section 42 of the NDPS Act. Since, the team had proceeded to the spot on the basis of recording of the information either in the CD file or sending information through telephone to the higher officers or after reducing the said information in writing, they would have the chance of noting the last crime number of the particular station. Even in the case of the recovery under section 43 of

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the NDPS act or chance recovery, due to the advantage of the telecommunication, the chance of getting the last crime number of the station is possible one. Therefore, without proper cross examination in the above aspect and with the supporting material for the manipulation of the records, the contention of the learned counsel for the appellant that the presence of crime number created suspicion relating to the recovery of the contraband in the occurrence place is nothing but myth. Further, it is true that the learned judge of this court in the judgment in the case of ***Thangapandi and others Vs. The Inspector of Police (L&O)*** reported in ***AIR OnLine 2018 MAD 1132.*** has held that the presence of the crime number in the arrest memo, recovery mahazar, label of the material object created doubt considering the other material circumstances of the said case in the process of the recovery of the contraband. But, the learned judge in the subsequent decision based on the earlier decision of the Hon'ble Judge of this court has held that the same cannot be used to suspect the recovery of the contraband.

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12.5. Therefore, this court is duty bound to consider both appeal judgment relied by the learned counsel for the appellants and the learned additional public prosecutor and the other precedents of the various high court and the Hon'ble Supreme Court.

12.5.1. The similar contention was raised before the Hon'ble Supreme Court in the case of ***Radhey Sham v. State of Haryana,*** reported in ***(2001) 10 SCC 206*** and the relevant paragraphs are as follows:-

> ***"6.*** *Learned counsel for the appellant further submitted that FIR number is mentioned on the recovery memo and therefore it is apparent that FIR was first registered and thereafter the recovery memo was prepared. He has also submitted that sealing of the article seized was also not proper. No independent witness was examined nor was the accused having any injury even though the van turned turtle. In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR.*
>
> ***7.*** *Lastly, learned counsel appearing for the appellant submitted that in view of the evidence of defence witness the Court ought to have considered that as there was some*

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altercation between Pawan Kumar and SI Baljit Singh, the accused has been falsely implicated in the crime. In our view, if there was any altercation or dispute between Pawan Kumar and SI Baljit Singh, there was no reason for the prosecution to involve the appellant. If they wanted falsely to involve Pawan Kumar, who is the owner of the van, they could have done so easily because from the van owned by him 8 bags containing 320 kg of chura-post (poppy husk) were found. Further, it is to be stated that the accused in his statement under Section 313 CrPC has stated that he was falsely implicated at the behest of Head Constable Om Prakash. As against this, witness Pawan Kumar has stated that there was dispute with Baljit Singh. In this view of the matter, no credence can be given to the defence.

8. *In the result, we hold that there is no substance in the appeal. It is, therefore, dismissed."*

12.5.2. The single bench of this Court in Crl.A.No.210 of 2011 has held as follows:-

"9. *Regarding the presence of crime number on the label, it is not a ground to doubt the recovery. It may only add suspicion if not properly explained or there is no plausible reasons inferable through the evidence. Normally, no Court will accept the property to its custody without proper*

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identification and case details. This precaution is in consonance to the Criminal Rules of Practice so as to avoid difficulty in tracing the property in the property room. Therefore, the presence of crime number in the property cannot be suspected merely because label with crime number was affixed prior to registering the case. The crime number might have written subsequently or obtained in advance from the station immediately after the seizure since, the team had proceeded to the spot based on specific information and the Station House Officer been reported about the information as per Section 42(2) of the NDPS Act, before proceeding to the spot. That is why in ***Rangan case****, the Court has precisely extracted what, Vasudevan (PW.2), has deposed and proceeded further and stated as follows:*

> *"வழக்கு சொத்தில் உள்ள விபர லேபிள் சம்பவ இடத்தில் வைத்து தயார் செய்து ஒட்டப்பட்டது என்றால் சரி. அந்த விபர லேபிளில் குற்ற் எண் மற்றும் என்டிபிஎஸ் சட்டப்பிரிவுகள் குறிப்பிடப்படடுள்ளன என்றால் சரி. நிலையம் வந்த பிறகு தான் முதல் தகவலறிக்கை பதிவு செய்யப்பட்டது என்றால் சரி. விபர லேபிளில் குறற் எண் மற்றும் என்டிபிஎஸ் சட்டப்பிரிவுகள் குறிப்பிடப்பட்டதால் காவல் நிலையத்திற்கு வந்து பின்னிட்டு தயார் செய்யப்பட்டவை என்றால் சரியல்ல."*

Vasudevan [P.W.2] has clearly admitted that the labels were affixed on the contraband at the place of seizure and he has also admitted that he has given the crime number on the labels. He has also admitted that the FIR [Ex.P.8] was

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registered only subsequently and he has not given any plausible explanation in his evidence, thereby making the very recovery doubtful, the benefit of which should go to the accused.

10. To make it more clear, this Court add the plausible explanation need not necessarily be in the testimony but it can be also inferred from the other evidences before the Court. In this case, the accused has affixed her LTI in the recovery mahazar. She has also affixed her LTI in the property labels. The properties were sent to the Magistrate under Form 95 (Ex.P.7) on 22.10.2004, the same day of recovery. Therefore ***mere presence of crime number on the label affixed prior to registering F.I.R is ipso facto will not render the recovery doubtful.***"

12.5.3. The similar contention was raised before this Court (**Hon'ble Mr.JUSTICE P.VELMURUGAN)** in ***S.A.Bakrudeen Vs. The Inspector of Police, NIB CID Chennai*** in ***Crl.A.No.395 of 2012*** and the relevant paragraph is as follows:-

"Normally in NDPS cases the seizure officer after getting permission from the superior officer only he would proceed to occurrence place, some time he would note down the next crime number of the police station. Therefore, mere mentioning the

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crime number in the arrest memo, search and recovery mahazar will not affect the case of the prosecution."

12.5.4. The similar contention was raised before this Court (**The Hon'ble Dr.Justice G.JEYACHANDRAN**) in **Sekar @ City Sekar Vs. Inspector of Police, NIB CID** in **Criminal Appeal No.425 of 2012** and the relevant paragraph is as follows:-

> *9. Regarding mentioning of crime number in the arrest memo, PW.2 Mr.Annakamu was unable to give satisfactory explanation. Similarly, when wife of the accused was informed and from where she was informed through telegram about the arrest of accused is also not properly explained. However, this discrepancy in the arrest memo at the most, they make the arrest illegal but not the seizure. Insofar as seizure is concerned, the sequence of event has spoken by prosecution witness is that on 16.02.2006 at about 11.30 hours, PW.2 has received the information and placed the information to his superior PW.4 Mr.V.Ashok Kumar, at about 11.45 hours and thereafter, they have proceeded to the spot. The informant has identified the accused at around 13.30 hours which has followed by seizure proceedings. The accused and the seized contraband has been produced before*

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the Magistrate on the same day of seizure and arrest. For producing the contraband before the Regular Court, 20 days delay is admitted. However, on the day of arrest itself, the contraband has been produced before the Judicial Magistrate. The sample received by the chemical examiner for analysis was found intact with seal. Therefore, there is no scope to suspect any manipulation. When the possession of contraband not been explained by the accused, the overall evidence let in by the prosecution, prove the charge of illegal possession of Ganja by the accused. Therefore, this Court finds no error in the finding of the trial Court.

12.5.5.This Court in the case of ***Kannan Vs. State represented by the Inspector of Police*** reported in ***AIR OnLine 2019 MAD 402,*** has held as follows:-

"20.Not only in this case, in many other cases also, this defence is taken by the counsels representing the accused person. This Court, earlier held in few cases that it is highly improbable of mentioning the crime number in the sample whereas, in the contraband or any other document which were supposed to be prepared prior to registration of F.I.R. Since, in normal practice, crime number is assigned only at the time of registering the F.I.R. However, it is explained by the

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learned Government Advocate (crl.side) that when a special wing like NIBCID, where the operations are only based on prior intelligence and on information, frequent registration of F.I.R., is very rare. Unless and until there is some chance recovery. Even in those circumstances, when a team of Police proceeds towards spot based on specific information, or otherwise, it is natural that they will know the last crime number registered in their Station. It is also possible for the Police immediately after seizure to ascertain the crime number over phone from the Station. In some cases, the witnesses are able to explain how the crime number finds place even in the documents which are supposed to have been prepared prior to the registration of the case. In some cases, they omit to explain. In any event, the mentioning of the crime number in contraband and other documents is for the sake of identification. At times, the crime number would have been written subsequently also. The failure on the part of the prosecution witness to explain per se will not render the seizure illegal or vitiate the prosecution. The Court has to look into overall evidence collected by the prosecution and the proof of the same and 'whether any prejudice caused to the accused otherwise'.

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12.5.6. The similar contention was raised before the Hon'ble Supreme Court in ***Parveen Kumar v. State of Delhi*** *reported in* **2013 SCC and** the relevant paragraphs is as follows:-

> ***"11.****In the context of the fact that Column no. 11 in the FIR mentioned the words "PM conducted", Ms. Kapoor contended that the words "to be" between the words "PM" and "conducted" appear to have been skipped. The FIR was recorded at 2.25 a.m. on 7.5.2000 and the postmortem was conducted at 12.30 p.m. on the same day and this is borne out by the aforesaid two documents. Merely because the words "Postmortem conducted" appear in the FIR, the contents of the FIR will not be rendered false. It is trite that any act of omission or commission or an irregular act of the Investigating Officer cannot result in throwing out the entire case of the Prosecution, more so as the contents of the rukka and the FIR are identical and both the said documents bespeak of the presence of the eye witness at the time of the incident. Learned APP contended that in any event the aforesaid submission of the defence deserved no consideration for a similar plea made before the Hon'ble Supreme Court in the case of Radhey Sham v. State of Haryana, (2001) 10 SCC 206 was not countenanced by the Supreme Court. In the said case, it was submitted on behalf of the Appellant that since*

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the FIR number was mentioned on the Recovery Memo, therefore, it was apparent that the FIR was first registered and thereafter the Recovery Memo was prepared. Rejecting this contention, the Supreme Court opined:–

> *"In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR."*

12.5.7.The similar contention was raised before the High Court of Punjab and Haryana in Mohan Singh ***Vs. State of Punjab*** reported in ***2007 SCC OnLine P&H 95.*** The relevant paragraph is as follows:-

> ***"11.*** *Counsel for the accused-appellants has next argued that after effecting recovery of the contraband vide recovery memo Ex.PG, Ruqa Ex.PH was sent to the police station for registration of the case and in the meantime, PW-2 Inspector Chuhar Singh prepared the rough site plan Ex.PK and Jama-talasi Memos., Ex. PL, PM and PN and all the said exhibits, namely, Exhibits PG, PK, PL, PM and PN contain FIR numbers and it gives an inference that the FIR was registered prior to the alleged recovery, which creates doubt about the veracity of the prosecution. The contention is again meritless in view of*

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the dicta of the Hon'ble Supreme Court in Radhey Shyam v. State of Haryana, (2001) 10 SCC 206, wherein similar argument was advanced and it was held that the same would not vitiate recording of the FIR and the conviction of the accused. Apart from this, a bare perusal of the memos. Exhibits PG, PK. PL, PM and PN reveals that FIR number was initially not filled appearing against those columns and the space was left blank and that FIR number was subsequently added after coming to know of the FIR number, which if seen with a naked eye, is with a different ink. Therefore, the defence cannot derive any benefit from the same."

12.5.8. The similar contention was raised before the Hon'ble Supreme Court in ***Naushad & Ors. Vs. State (NCT of Delhi)*** reported in ***2009 SCC OnLine Del 3520.*** The relevant paragraph is as follows:-

"47. As regards the submission that the number of FIR registered in the present case is mentioned in the seizure memo Ex.PW-26/C, suffice would it be to state that the investigating officer Inspector Harshvardhan PW-26, has not been cross-examined with respect to said aspect of the matter. No suggestion was given to the investigating officer that seizure

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memo Ex.PW-26/C was prepared only after the registration of the FIR and for that reason, the number of the FIR came to be mentioned on the top of the seizure memo. Possibility cannot be ruled out that the investigating officer mentioned the number of the FIR on the seizure memo, after the receipt of the formal FIR from the police station. Having given no opportunity to the investigating officer to explain the circumstance pertaining to mentioning of the number of the FIR in the seizure memo Ex.PW-26/C no adverse inference can be taken against the prosecution. In taking the said view, we are supported by the decisions of Supreme Court reported as Rahim Khan v. Khurshid Ahmad AIR 1975 SC 290, State of UP v. Anil Singh 1988 (Supp) SCC 686 andSunil Kumar v. State of Rajasthan (2005) 9 SCC 298.

48. In said regards, it is also relevant to note the decision of Supreme Court reported as Radhey Shyam v. State of Haryana (2001) 10 SCC 206 wherein it was observed as under:-

> *"Learned counsel for the appellant further submitted that FIR number is mentioned on the recovery memo and therefore it is apparent that FIR was first registered and thereafter the recovery memo was prepared. He has also submitted that sealing of the article seized was also not proper. No independent witness was examined nor was the accused having any injury even though the van turned turtle. In our*

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view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR...." (Emphasis Supplied)

49. Therefore, in view of the above discussion, it cannot be held that the seizure memo Ex.PW-26/C is a manipulated or fabricated document and that the prosecution case is false."

As the Bible says "*If the salt has lost its flavour, wherewith shall it be salted*?", *or as the ancient Romans used to say, "Who will guard the Praetorian guards?"*

12.6. From the above reading of the precedents and also the observation of the Hon'ble Supreme Court, the presence of the crime number cannot be considered as a isolated circumstance to disbelieve the evidence of the recovery witnesses.

12.7. The presence of crime number in the MOs has no significance in the recovery of the contraband on the basis of the cogent and trustworthy evidence of P.W.1 and P.W.2. P.W.1 and P.W.2 clearly deposed about the recovery of the contraband from the appellants. In this case, the defense cross-examined about "*time of the registration of the case*"

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and "*time of the recovery*" and no further answer was elicited from the searching officer about his prior knowledge about the last crime number. Apart from that, they have not also established the prejudice caused to the presence of the crime number when the recovery was proved through the cogent and trustworthy evidence of the prosecution witness. Furhter, the rules of practice demands to note the crime number in the documents and material objects. There is no material elicited by the defence that the Investigating Agency mentioned the crime number without any recovery on the occurrence place. Hence, mere presence of the crime number on the label affixed on the MO's, arrest memo, recovery mahazar prior to the registering the FIR *ipso facto* will not make the recovery doubtful and the crime number is being mentioned at the time of producing the contraband before the Court as per the criminal rules of practice for the safe and proper custody of the property cannot be found fault with. Therefore, the said contention of the accused to doubt the recovery is misconceived and the same is liable to be rejected and accordingly, rejected.

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13. In view of the above circumstances, the prosecution clearly proved the case beyond reasonable doubt and this Court finds no merit in the contention of the learned counsel for the appellants. Hence, the conviction and substantive sentence imposed against the appellants is liable to be confirmed.

14. However the contention of the learned counsel for the appellants that both are inside the prison for more than 7 years and they are unable to pay the fine amount deserves to be accepted to reduce the default sentence as held by this Court in similar circumstances in Crl.A(MD)No.16 of 2016.

15. In the special circumstances of the case, default sentence imposed against the accused is reduced. Hence, considering the inability of the appellants in paying the fine amount, this Court is inclined to reduce the default sentence from 12 months simple imprisonment to 2 months of Simple Imprisonment.

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16. Accordingly, the conviction and sentence passed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.647 of 2021 dated 27.09.2023, is hereby **confirmed** and the **default sentence alone is reduced from 12 months simple imprisonment to 1 month Simple Imprisonment.** The period already undergone by the appellants is ordered to be set off under Section 428 of Cr.P.C.

17. With the above modification, t**he Criminal Appeals are partly allowed.**

15.05.2025

NCC :Yes/No
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K.K.RAMAKRISHNAN.J,

dss

To

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

2.The Inspector of Police,
Karikedu Police Station,
Madurai District.

3.The Superintendent,
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.

Crl.A.(MD).Nos.961 & 1036 of 2023

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