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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	30.01.2025
Pronounced On	:	04.02.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).Nos.1007 of 2023 & 1090 of 2024
and
CrI.MP(MD)No.13541 of 2024

Selvam

... Petitioner/ Accused No.1
(in CrI.A.(MD).No.1007 of 2023)

Thanthiran

... Appellant/ Accused No.2
(in CrI.A.(MD).No.1090 of 2024)

Vs.

The State of Tamil Nadu through,
The Inspector of Police,
Elumalai Police Station,
Madurai District.
(In Crime No.137 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 and allow these appeals and acquit the appellants from all the charges by setting aside the impugned judgment passed by the I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.508 of 2021 dated 21.09.2023.



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For appellant : Mr.J.Selvam
(in CrI.A.(MD).No.1007 of 2023)

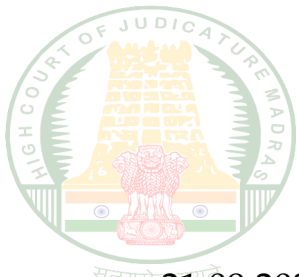
: Mr.A.Balaji
(in CrI.A.(MD).No.1090 of 2024)

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

COMMOM JUDGMENT

Since these two appeals are arising out of the same occurrence and filed against the order of conviction made in C.C.No.508 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.

2. The appellants/ A1 & A2 in C.C.No.508 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

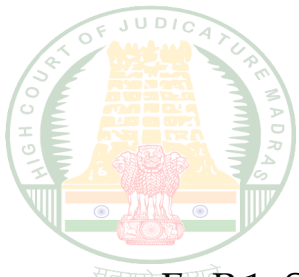


21.09.2023. The conviction and sentence is as follows:

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<i>Appellants Rank</i>	<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
A1 & A2	8(c) r/w 20(b)(ii)(B) of the NDPS Act	5 years R.I each and to pay a fine of Rs.25,000/- each in default to undergo 12 months S.I each.

3. According to the prosecution, on 04.05.2021, P.W.2 received the secret information regarding the possession of Ganja for sale by the appellants. She recorded the said information in the General Diary and informed the same to his superior namely, the Deputy Superintendent of Police, Usilampatti, and obtained permission. Thereafter, at 07.00 a.m, she proceeded to the occurrence place namely, Rengasampatti Bus Stand along with her team and the informant. Then, at about 07.30 a.m, the informant identified three persons, who had been standing in a suspecting manner. Among them, 2 persons were found in separate possession of a white colour sake. On seeing the police party, the appellant tried to fly away from the occurrence place. However, P.W.2 and her team nabbed the appellants and made a search on them under



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Ex.P.1, Search Consent Letter and recovered 22 Kgs of Ganja (**A1-11 kg, A2-10 kg**) from the accused and took samples from each bag by following the procedure stated in the NDPS Act. Then, they arrested and taken them to the Station and registered the case and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by the Investigating Officer and he filed the final report after obtaining the Chemical Analysis Report and examining the witnesses. The learned trial Judge has taken the same on file in C.C.No.508 of 2021.

4. 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 there existed a *prima facie* case against the accused/appellants, framed charges under Sections 8(c) r/w 20(b) (ii) (C) of NDPS Act 1985, and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood for trial.



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5.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 6 material objects as M.O.1 to M.O.6.

6.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.

7.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.508 of 2021 were guilty and passed the conviction and sentence against the appellants as stated above.

8.Challenging the conviction and sentence against the appellants, present appeals have been filed.



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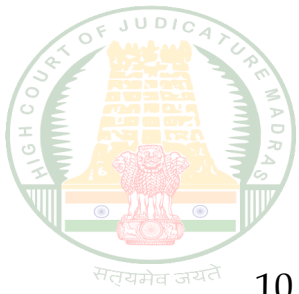
9.The learned counsel for the appellants in both the appeals made the following submissions:-

9.1. There was a huge delay of 2 months and 10 days in producing the contraband before the Court below and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.

9.2. He further submitted that there is no compliance of Sections 42 of NDPS Act, in letter and spirit. Therefore, the conviction and sentence passed against the appellants is to be set aside.

9.3. The non-examination of the independent witnesses is an additional circumstance which creates doubt over the recovery of the contraband as alleged by the prosecution.

9.4. There was no compliance of Section 57 of the NDPS Act. Hence, he seeks to allow these appeals by setting aside the conviction and sentence passed by the learned trial Judge.



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10. The learned Additional Public Prosecutor would submit that the prosecution clearly proved the case through the evidence and the contemporaneous documents and he relied the following precedents:-

i) *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120

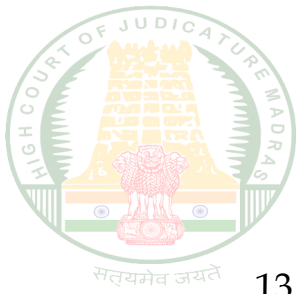
ii) *Karnail Singh Vs. State of Haryana* reported in (2009) 8 SCC 539.

iii) *Hardip Singh Vs. State of Punjab* reported in (2008) SCC 557

- Therefore, he prayed for dismissal of the appeals.

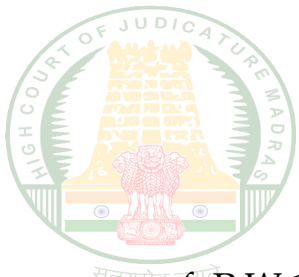
11. This Court considered the rival submissions made by the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

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



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13. P.W.2 had received the secret information about the illegal transportation of Ganja by the appellants on 04.05.2021 at 07.00 am. Thereafter, after making entry in the General Diary, P.W.2 reduced it in writing and the same was sent to the superior officer namely, The Deputy Superintendent of Police, Usilampatti. In Ex.P1, there is a clear mention about the information sent to the superior and the same was done as per the compliance of the Hon'ble Constitution Bench judgment in the case of *Karnail Singh Vs. State of Haryana* reported in (2009) 8 SCC 539. The said document was marked and there was no dispute over the said document. Even though, they were subjected to cross examination, nothing was elicited to disbelieve the said documents. Therefore, in this case, the procedure under Section 42 of the NDPS Act, is complied with. P.W.2 after recording the information and complying the procedure under Section 42 of the NDPS Act, proceeded to the occurrence place namely, Rengasampatti Bus Stop, which was stated by the informant, on 04.05.2021 at about 07.00 am. By following the procedure, she recovered the contraband from the gunny bags, which were carried by the appellants. The said evidence of P.W.2 corroborated by the evidence



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of P.W.1. Both were subjected to cross examination and nothing was elicited to disbelieve their version. Further, in the evidence of P.W.1 and P.W.2, there are no material contradictions or discrepancies between their version relating to the recovery of the contraband. Their evidence are cogent and trustworthy and no material was elicited to disbelieve their version or any case of false implication. Therefore, the recovery was proved in accordance with law.

14.P.W.2, had taken the samples from each bag, which were carried by the appellants and properly sealed the same and the remaining contraband was also properly sealed. Then, she prepared mahazar and brought the accused, remaining contraband and the samples to the police station and registered the case. Thereafter, she prepared the report under Section 57 of the NDPS Act and submitted to . P.W.3 clearly deposed about the receipt of the information under Section 42 of the NDPS Act and also the report submitted by P.W.2. He also deposed about the fact that the accused along with contraband under Form-91 was produced before the Court at the time of remand itself. There was no delay in



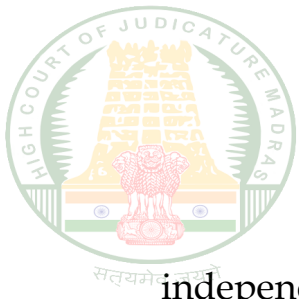
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producing the entire contraband along with the sample taken under M.O. 1 to M.O.6. The Chemical Analyst Reports, speaks about the presence of cannabis in the samples and the report was also marked as Ex.P.17.

15. Delay in producing the contraband before the Special Court is not a material lapse, to acquit the appellants, when the entire contraband was produced before the learned Judicial Magistrate at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate and thereafter, the same was produced before the Special Court without any tampering of the seal.

16. The said contraband was marked as material object before the trial Court without any objection and hence, the contention of the learned counsel for the appellants is not legally sustainable.

17. The Hon'ble Constitution Bench of the Supreme Court in *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120 reiterated the principle that the non-examination of the



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independent witnesses is not a circumstances to disbelieve the evidence regarding recovery, when the other evidence are cogent and trust worthy.

In this case, the learned trial Judge has considered the entire evidence to hold that the recovery from the appellants was proved in accordance with law.

18. Therefore, in all aspects, the prosecution clearly proved the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. This Court finds no merit in the contention of the learned counsel for the appellants to disbelieve their version. Hence, the conviction and sentence imposed by the learned trial Judge is liable to be confirmed.

19. However, though the appellant/A1 in CrI.A.(MD).No.1007 of 2023 has previous antecedents of similar nature, considering the case in C.C.No.15 of 2020, which was pending against him for his alleged involvement of possession of 30 kg of ganja ended in acquittal on 22.01.2025, and also considering the incarceration period of the appellants i.e., 3 ³/₄ years, this Court is inclined to reduce the sentence from 5 years



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Rigorous Imprisonment to the sentence period **already undergone** for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

20. In view of the above, though the conviction passed by the trial Court for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is hereby confirmed, sentence of 5 years Rigorous Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, **is reduced to the period, which was already undergone by the appellants.** Fine amount with default sentence is hereby confirmed.

21. With the above modification, the Criminal Appeals are **partly allowed.** Consequently, the connected miscellaneous petition is closed.

04.02.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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Note : Issue order copy on 06.02.2025



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To

- 1.The I Additional Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Elumalai Police Station, Madurai District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN.J.

dss

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