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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.1043 of 2023

Kubendiran

... Appellant/Sole Accused

Vs.

The State rep by its,
The Inspector of Police,
NIB CID, Theni District.
(Crime No.43 of 2013)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.31 of 2016 dated 07.10.2023, on the file of the II Additional Special Court for NDPS Act Cases, Madurai, and set aside the same.

For appellant : Mr.M.Jegadeesh Pandian

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

JUDGMENT

The sole accused in C.C.No.31 of 2016 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, has filed this Criminal Appeal before this Court challenging the conviction and sentence



imposed against him in the impugned judgment dated 07.10.2023. The conviction and sentence is as follows:

<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
8(c) r/w 20(b)(ii)(B) of the NDPS Act	3 years R.I and to pay a fine of Rs.15,000/- in default to undergo 6 months S.I

2. According to the prosecution, on 18.05.2013 at about 03.15 p.m, P.W.2 received the secret information regarding transportation of Ganja by the appellant. He recorded the said information in the General Diary and informed the same to his superior/P.W.3 and obtained the permission and proceeded to the occurrence place along with his team and the informer. The informant identified the accused, who was coming in a black colour Hero Honda Passion two wheeler bearing Reg.No.TN-60-K-7485. On seeing the police party, the appellant left the scene of occurrence. However, P.W.2 and his team surrounded the appellant and made a search on him under Ex.P1/Search Consent Letter and recovered the contraband of 6 Kgs of Ganja in a white colour plastic gunny bag and took the sample following the procedure stated in the



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NDPS Act. Then, they arrested the accused and taken him 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.31 of 2016.

3. After appearance of the accused, copies of records were furnished to him 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/appellant, framed charges under Sections 8(c) r/w 20(b) (ii) (B) of NDPS Act, and the same was read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood for trial.

4. 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 three material objects as M.O.1 to M.O.3.



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5. 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.

6. The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.31 of 2016 was guilty and passed the conviction and sentence against the appellant as stated above.

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

7.1. There was a huge delay 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.

7.2. He further submitted that there is no compliance of Sections 42 & 50 of NDPS Act, in letter and spirit. Therefore, the conviction and sentence passed against the appellant is to be set aside.



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7.3. Non examination of the independent witnesses is an additional circumstance which creates doubt over the recovery of the contraband as alleged by the prosecution.

7.4. There was no compliance of Section 57 of the NDPS Act.

Hence, he seeks to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.

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

8.1. Delay in producing the contraband before the Special Court is not material lapse, to acquit the appellant, 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.



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

8.3.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 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 appellant was proved in accordance with law.

8.4. In all aspects, the prosecution clearly proved the case through the evidence and contemporaneous documents. Therefore, he prayed for dismissal of the appeal.



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9.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.

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

11.P.W.2 had received the secret information about the illegal transportation of Ganja by the appellant on 18.05.2013 at 03.15 pm. Thereafter, after making entry in the General Diary and reduced it in writing and the same was sent to the superior officer under Ex.P5. In Ex.P5, 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*



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reported in (2009) 8 SCC 539. The said document was marked and there was no dispute over the said document. Even though, they are subjected to the 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 as stated by the informant, namely, near Varusanadu-Singarajapuram, Vaigai River bridge on 18.05.2013 at 03.15 pm. By following the procedure, he recovered the contraband from the gunny bag carried by the appellant. The said evidence of P.W.2 corroborated with the evidence 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 trust worthy. No material was elicited to disbelieve their version or any case of false implication. Therefore, the recovery was proved in accordance with law.



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12.P.W.2, had taken the sample from the bag carried by the appellant and properly sealed and the remaining contraband also was properly sealed. Then, they prepared mahazar and brought the accused, remaining contraband and the samples to the police station and registered the case. Thereafter, he prepared the report under Section 57 of the NDPS Act and submitted to P.W.3. 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 producing the entire contraband along with the sample taken under M.O.1 to M.O.3. The Chemical Analyst also in his report, speaks about the presence of cannabis in the samples produced before him and the report was marked as Ex.P.12. 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 appellant to disbelieve their version. Hence, the conviction and sentence imposed by



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the learned trial Judge is hereby confirmed.

13. Considering the period of incarceration and also considering the fact that even though the accused has previous antecedents, after the year 2015, he has not involved in any of the offence, this Court is inclined to reduce the sentence from 3 years to 6 months.

14. Accordingly, this Criminal Appeal is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act in C.C.No.31 of 2016, by the II Additional Special Court for NDPS Act Cases, Madurai, vide judgment dated 07.10.2023, is hereby confirmed.

(ii) the sentence of imprisonment to undergo 3 years rigorous imprisonment and a fine of Rs.15,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act;

is modified into



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“to undergo 6 months of rigorous imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act; and the judgment relating to the fine amount is hereby confirmed”.

09.01.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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Note : Issue order copy on 23.01.2025

To

- 1.The II Additional Special Court for NDPS Act Cases,
Madurai.
2. The Inspector of Police,
NIB CID, Theni 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.

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