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Crl.A. No. 211 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No. 211 of 2023

1. K. Akbar Khan
2. M. Loganathan
3. P. Manikanden @ Ninchamani
4. P. Melki
5. K. Krishna @ Height Krishna ..Appellants

Vs.

The Inspector of Police,
H-6, R.K. Nagar Police Station,
Chennai – 600 021.

..Respondent

Prayer: Criminal Appeal against the judgment dated 20.02.2023 passed in
C.C. No. 57 of 2021 by the learned Principal Special Judge, Special Court
under EC & NDPS Act, Chennai.

For Appellants	::	Mr.S. Karthikeyan for Mr.M.G. Martin Manivannan
For Respondent	::	Mr.Raja Kumar, Addl. Public Prosecutor



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J U D G M E N T

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The criminal appeal has been preferred as against the judgment dated 20.02.2023 passed in C.C. No. 57 of 2021 by the learned Principal Special Judge, Special Court for EC & NDPS Act, Chennai convicting A1/1st appellant for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentencing him to undergo rigorous imprisonment for a period of 5 years together with a fine of Rs.50,000/- carrying a default sentence of rigorous imprisonment for 6 months besides convicting A1 to A5/Appellants 1 to 5 for the offence under Section 29(1) of NDPS Act and sentencing each one of them to undergo rigorous imprisonment for a period of 2 ½ years and to pay a fine of Rs.20,000/- each carrying a default sentence of rigorous imprisonment for a period of 6 months.

2. It is the case of the prosecution that on secret information, P.W.1 along with P.W.2 went to the place of occurrence and on identification by a secret informant, they had intercepted the accused at about 9.45a.m. and after returning to the Police Station at 12.30pm. and informing the appellants of their right to be searched by a Gazetted Officer or by a nearest Magistrate and on the appellants agreeing to be searched by



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P.W.1, the search was conducted during which the 1st appellant was found to be in possession of 1.300Kgs of Ganja; that P.W.1 submitted his report under Section 57 of NDPS Act to P.W.3; P.W.3, in turn, registered the FIR at about 12.30p.m.; P.W.4 conducted the investigation and filed the final report for the offences under Sections 8(c)r/w 20(b)(ii)(B) and 29(1) of NDPS Act against the appellants.

3. The prosecution examined four witnesses as P.W.s 1 to 4 and marked Exs. P1 to P8 and M.O.s 1 to 3. The Trial Court found the 1st appellant alone guilty of the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and all the appellants guilty under Section 29(1) of NDPS Act and sentenced them as aforesaid.

4. Learned counsel for the appellants would submit that the case has been foisted upon the appellants; that the seizure could not have been made in the manner alleged by the prosecution; that FIR Ex.D1 produced by the defence would show that P.W.1 could not have been present at the place of occurrence till 12.30p.m.; that there is no evidence as against appellants 2 to 5 as they were prosecuted only on the confession of the 1st appellant and hence, the impugned judgment is liable to be set aside.



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5. Learned Additional Public Prosecutor, per contra, would submit that the seizure of the contraband from the appellants cannot be disbelieved merely because there is another FIR marked as Ex.D1 and there are certain minor variations in the time of occurrence in the 2 FIRs; that both P.W.s 1 and 2 have consistently stated the manner in which the alleged seizure had been made and that there is no reason to disbelieve the evidence of P.Ws.1 and 2. Learned Additional Public Prosecutor would further submit that joint communication issued under Section 50 of NDPS Act to all the accused is not fatal to the case of the prosecution since no recovery had been made from appellants 2 to 5.

6. As stated above, the prosecution had examined P.W.s 1 to 4. P.W.1 is the Sub Inspector of Police, who went to the place of occurrence along with P.W.2 and apprehended the appellants. The special report of P.W.1 was submitted to P.W.3, who registered the FIR. P.W.4 is the Investigating Officer. Thus the recovery is sought to be established through the evidence of P,W.s 1 ad 2. As per the evidence of P.W.1, he had received secret information at about 9.15 a.m. on 11.02.2020. Thereafter, he left for the place of occurrence, which is at the backside of IOC Bus Stand at



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Tondiarpet. It is his further statement that after completing the formalities, which took almost 3 hours, he went to the Police Station along with the accused at 12.30p.m.

7. It is seen that the defence had marked Ex.D1, the FIR registered by P.W.1 at 12.40p.m. In the said FIR which was registered for the offence under Section 75 of TN City Police Act, it had been stated that P.W.1 had arrested the accused therein at 12.15p.m. at Nehru Nagar Railway Track. Therefore, it is the case of the defence that the version of P.W.1 that the seizure and the other formalities were made between 9.30a.m. and 12.30p.m. cannot be believed. P.W.1 was confronted with Ex.D1. P.W.1 would admit that he had registered the FIR, Ex.D1. However, strangely, no explanation had been offered by P.W.1 as to how the two FIRs had been registered in respect of two different occurrences at the same time. He could not have been present in two different places almost at the same time. P.W.1 could not have been present at Nehru Nagar Railway Track at 12.15 p.m. to arrest the accused in the FIR marked as Ex.D1. Thus, there is a doubt as to which of these two versions is false. In such cases, the benefit of the same has to necessarily enure to the benefit of the accused.



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8. That apart, it is seen that all the five accused were searched and a joint communication was given to all the accused informing them about their right to be searched by a Gazetted Officer. Though no seizure was made from A2 to A5, this Court is of the view that in the facts and circumstances of the case, the mandatory provision under Section 50(1) of NDPS Act had not been complied with in view of the judgment of the Honourable Apex Court in ***State of Rajasthan V. Parmanand and Another*** reported in ***((2014) 5 SCC 345)*** wherein it has been held thus:

“14. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view



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that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated. “

9. Further, there is absolutely no evidence against A2 to A5 as regards the offence of conspiracy. The only material relied on by the prosecution is the confession of the 1st appellant. It is needless to say that it cannot be the basis to hold the other accused guilty of the offence under Section 29(1) of NDPS Act.



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10. Therefore, for all the above reasons, this Court is of the view that the prosecution has failed to establish the seizure. Consequently, the conviction cannot be sustained. The impugned judgment is set aside and the appellants are acquitted of all the charges. The appeal stands allowed. Fine amount if any, shall be refunded. Bail bonds, if any, executed, shall stand discharged.

Neutral Citation: Yes/No

12.02.2026

nv/dk

To

1. The Principal Special Judge,
Special Court under EC and NDPS Act,
Chennai.
2. The Inspector of Police,
H-6, R.K. Nagar Police Station,
Chennai – 600 021.
3. The Public Prosecutor,
High Court, Madras.



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