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CRL A No. 413 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10-02-2026

PRONOUNCED ON : 04-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 413 of 2023

1. Ranganathan

2. Selvam

... Appellants/Accused

Vs.

The Inspector Of Police
NIB-CID,
Chennai.
[Crime No. 33/2020]

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the Judgment and conviction of the lower Court imposed in C.C.No.132/2021 dated 02.02.2023 by the learned Principal Special Judge, EC and NDPS Act cases, Chennai and acquit the Appellants herein.

For Appellants: Mr. P.Govindarajan (for 1st appellant)
Mr.V.K.Sathiyamurthy (for 2nd appellant)

For Respondent: Mr.S.Rajakumar
Additional Public Prosecutor

**Judgment**

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The Criminal Appeal challenges the Judgement dated 02.02.2023 passed in C.C.No.132 of 2021 by the learned Principal Special Judge, EC and NDPS Act cases, Chennai, convicting the appellants for the offence under Sections 8(c) r/w 20(b) (ii)(C) and 29(1) of the NDPS Act and sentencing them as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 & A2	8(c) r/w 20(b)(ii)(C) NDPS Act	Each of them to undergo RI for 12 years and to pay a fine of Rs.1,20,000/- each, in default to under go RI for 6 months.
	8(c) r/w 29(1) NDPS Act	Each of them to undergo RI for 5 years and to pay a fine of Rs.50,000/- each, in default to under go RI for 6 months.
	Sentences are ordered to run concurrently.	

2.(a) It is the case of the prosecution that on 26.11.2020 at about 1.00 p.m., PW1 attached to the respondent police station received a secret information, that the appellants were smuggling Ganja from Andhra Pradesh in a Bolero pick up van and would reach Madavaram Rountana at about 2.00 p.m.; that PW1 thereafter recorded the information [Ex.P1] and went to the place of occurrence along with PW2 and one Sudhakar (not examined); that they intercepted the vehicle bearing Regn.No.KA51-



A-1482 which was identified by the secret informer; that after introducing themselves to the appellants and since no independent witnesses were willing to offer themselves as witnesses, PW1 and his team conducted search of the car; that they had also issued a communication under Section 50 of the NDPS Act appraising the appellants of their right to be searched by a gazetted officer or a Magistrate; that the appellants permitted them to search; that thereafter the car was searched in which 8 white-coloured polythene sacks were found; that each of the sacks contained 20 kgs of Ganja; and that samples were drawn, the appellants were arrested and FIR [Ex.P9] was registered in Cr.No.33 of 2020 for the offence under Sections 8(c) r/w 20(b) (ii)(C), 25 and 29(1) of the NDPS Act.

(b) Thereafter, PW1 recorded the voluntary confession of A1, examined witnesses and handed over the investigation to PW4. PW4 conducted the investigation and filed the final report against the appellants for the offence under Sections 8(c) r/w 20(b) (ii)(C), 25 and 29(1) of the NDPS Act, before the learned Principal Special Judge, EC and NDPS Act cases, Chennai.



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(c) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as C.C.No.132 of 2021 by the learned Principal Special Judge, EC and NDPS Act cases, Chennai, for trial. The Trial Court had framed charges against the accused for the offences under Sections 8(c) r/w 20(b) (ii)(C), 25 and 29(1) of the NDPS Act and when questioned, the accused pleaded 'not guilty'.

(d) To prove its case, the prosecution had examined 4 witnesses as P.W.1 to P.W.4 and marked 17 documents as Ex.P1 to Ex.P17, besides 24 material object as M.O.1 to M.O.24. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. Though none was examined on the side of the accused, two documents viz., Photograph of accused in Dinamalar Newspaper and Map of Madavaram Roundtana, were marked as Ex.D1 and Ex.D2, respectively.

(e) On appreciation of oral and documentary evidence, the trial Court found the accused not guilty of offence under Section 25 of the



NDPS Act and convicted and sentenced the accused as stated above.

Hence, the accused have preferred the instant appeal challenging the said conviction and sentence.

3. (i) The learned counsels for the appellants would submit that there are several infirmities in the prosecution case; that the appellants were actually brought from Andhra Pradesh only for the purpose of foisting the case; that they were made to stay at a hotel at Egmore; that on 26.11.2020 at about 3.30pm, they were made to vacate the room and this case has been foisted; that the mandatory provision under Section 50 of the NDPS Act has not been complied with since a joint communication was given to both the appellants; that the samples were neither drawn in the presence of a learned Magistrate nor the inventory was certified by the learned Magistrate in violation of Section 52-A of the NDPS Act; and that the contraband was not sent to the Court immediately and there is no evidence to show that they were in safe custody for nearly 5 days.

(ii) The learned counsels would further submit that Ex.D1 which is the newspaper publication would reveal that the seals of the gunny bags



were not intact; that Ex.D2 which is the sketch of Madavaram Rountana would reveal that the incident could not have taken place at the said location; that the test reports of the expert cannot be relied upon as the method conducted by the expert has not been spelt out; that though the PW1 would state that the information was noted in the general diary, the general diary was not produced before the Court; that PW1 would admit in the cross examination that Rs.10,000/- was drawn from the account of the accused by using the debit card, which would suggest that the seizure could not have been made in the manner alleged by the prosecution; that PW4 would admit that he had not conducted any investigation; and that substantial part of the investigation was conducted by PW1 himself who is the complainant, and hence serious prejudice has been caused to the appellants and prayed for acquittal.

(iii) The learned counsels relied upon the following judgments in support of their submissions.

i.Nicklaus Peter Heel v. State of Goa, reported in MANU/MH/0498/1998 [Bombay High Court];

ii.Vijaysinh Chandubha Jadeja v. State of Gujarat, reported in 2011 (1) SCC 609 [Hon'ble Supreme Court];

iii.State of Rajasthan v. Parmanand and Others, reported in



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(2014) 5 SCC 345 [Hon'ble Supreme Court];

iv.State of Uttar Pradesh v. Hansraj alias Hansu, reported in (2018) 18 SCC 355 [Hon'ble Supreme Court];

v.Mohamed Ali and Another v. State Rep. By the Inspector of Police, reported in (2021) 4 MLJ (CrL.) 399 [Madras High Court];

vi.Yusuf @ Asif v. State, reported in 2023 LiveLaw (SC) 890 [Hon'ble Supreme Court];

vii.Mohammed Khalid and another v. The State of Telengana in CrL.A.No.1610 of 2023 decided on 01.03.2024 [Hon'ble Supreme Court];

viii.Narcotics Control Bureau v. Kashif, reported in 2024 (11) SCC 372 [Hon'ble Supreme Court]; and

ix.Simarnjit Singh v. State of Punjab, reported in (2024) 14 SCC 222 [Hon'ble Supreme Court];

4. Learned Additional Public Prosecutor *per contra* submitted that since the contraband was seized from the vehicle, non-compliance of Section 50 of the NDPS Act would not be of any avail to the defence; that the fact that the inventory was not certified by the Magistrate or the samples were not drawn in presence of the Magistrate also is not fatal to the prosecution case as non-compliance of Section 52-A of the NDPS Act *per se* would not vitiate the trial and relied upon the judgment of the Hon'ble Supreme Court, ***Narcotics Control Bureau v. Kashif***, reported in **2024 (11) SCC 372**; that PW4 is the investigating officer and merely



because a portion of the investigation was conducted by PW1, his evidence cannot be disbelieved and in any case no prejudice has been caused to the appellants even assuming PW1 had conducted the investigation; and that the points raised by the appellants cannot be the basis to acquit them in a serious offence where the statute permits presumptions.

5. As stated above, the prosecution examined 4 witnesses. PW1 is the Inspector of Police, who received the information, and went to the scene of occurrence along with the secret informer. He intercepted the car and found 8 white-coloured polythene sacks each containing 20 Kgs of Ganja. He would state that two samples were drawn from each of the eight sacks and samples were marked as S1 to S16 and the remaining Ganja were sealed and marked as P1 to P8.

6. The cross-examination of PW1 by the defence would show that it is the case of the defence that it is highly improbable that the appellants had come from Andhra Pradesh as there is no necessity for the appellants to pass through the Madavaram Roundtana; that PW1 had not specifically



stated as to in which part of the Roundtana, they intercepted the vehicle; that though the seizure was said to be made in a public place, no independent witnesses have been examined and the newspaper publications shows that there were no seals in the gunny bags.

7. It is seen that all the above would not render the evidence of PW1 unreliable. It is well settled that if the evidence of the police officer is cogent and convincing, then non-examination of the independent witnesses would not be fatal to the prosecution.

8. Be that as it may. PW2, is the Sub Inspector of Police, who had assisted PW1 to intercept the car and he would corroborate the evidence of PW1. Nothing has been elicited in the cross-examination to discredit his testimony. In his cross-examination, the defence had elicited that in the newspaper publication [Ex.D1] the seals in the gunny bags were not found. However PW2 would explain that the seals were found in bags and it is not seen in the photographs.



9. PW4 is the investigating officer. Though he has made certain inconsistent statements viz., that he had not examined PW2 and one Sudhakar during investigation and thereafter would state that he had examined them; that he had not done any investigations independently; and that later he clarified it by saying that he had examined PW3 and also taken steps to verify as to who is the owner of the vehicle, this Court is of the view that the said infirmities in the evidence would not render the prosecution case doubtful. Even assuming that PW1 had conducted a major part of the investigation, no prejudice has been said to be caused to the appellants.

10. Admittedly, the contraband was seized from the vehicle of the appellants. Therefore, the joint communication under Section 50 of the NDPS Act is not fatal to the prosecution as nothing has been seized from the personal search of the appellants. It is well settled that Section 50 of the NDPS Act would not be applicable to a search made from the vehicles. This has been reiterated by the Hon'ble Supreme Court in ***State of Punjab vs. Baljinder Singh***, reported in **2019 (10) SCC 473**.



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11. Similarly, as regards the non-compliance of Section 52-A of the NDPS Act, as rightly contended by the learned Additional Public Prosecutor, the Hon'ble Supreme Court in ***Narcotic Control Bureau Vs. Kashif*** reported in **2024 (11) SCC 372** had held that non-compliance of Section 52-A of the NDPS Act, would only amount to a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial; and that any procedural irregularity would not by itself make the entire evidence collected during the course of investigation inadmissible. The relevant portion reads as follows:

“50. The upshot of the above discussion may be summarised as under:

50.1. The provisions of the NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

50.2. While considering the application for bail, the court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

50.3. The purpose of insertion of Section 52-A laying down the procedure for disposal of seized narcotic drugs



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and psychotropic substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the narcotic drugs and psychotropic substances.

50.4. Sub-section (2) of Section 52-A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

50.6. Any lapse or delay in compliance with Section 52-A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.

12. The Hon'ble Supreme Court in the above mentioned case had also found the earlier judgments of the Hon'ble Supreme Court which held that the conviction cannot be sustained if Section 52-A of the NDPS Act is violated, were rendered in the facts of those cases and none of



those judgments laid down any law either with regard to Section 52-A of the NDPS Act or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. The relevant portion reads as follows:

“46. At this stage, we must deal with the recent judgments in *Simarnjit Singh v. State of Punjab* [*Simarnjit Singh v. State of Punjab*, (2024) 14 SCC 222: 2023 SCC OnLine SC 906], in *Yusuf v. State* [*Yusuf v. State*, (2024) 14 SCC 217: 2023 SCC OnLine SC 1328] , and in *Mohd. Khalid v. State of Telangana* [*Mohd. Khalid v. State of Telangana*, (2024) 5 SCC 393: (2024) 2 SCC (Cri) 650] in which the convictions have been set aside by this Court on finding non-compliance with Section 52-A and relying upon the observations made in *Mohanlal* [*Union of India v. Mohanlal*, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864]. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52-A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act.”



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Therefore, this Court is of the view that non-compliance of Section 52-A of the NDPS Act, would not be fatal to the prosecution in the facts and circumstances of the case. The appellants have not established that any serious prejudice was caused to them.

13. As stated above, the other submission is that PW1 had conducted the substantial part of the investigation and PW4, the investigating officer had not conducted any investigation. Admittedly, PW1 did not file the final report. PW4 as stated above has made certain inconsistent statements. However, his investigation cannot be set aside as deemed to be flawed. PW1 had examined, a couple of witnesses and handed over the investigation to PW4. Though PW4 would admit in one part of his cross examination that he did not conduct any investigation independently, however, he would clarify stating that he examined the expert and also took steps to identify the owner of the vehicle and ultimately filed the final report. The non-examination of the witness Sudhakar by PW4 during the course of the investigation cannot be said to have caused any prejudice to the appellants. Unless prejudice is shown,



the said aspect would not have any bearing on the seizure, which otherwise has been established through the evidence of PW1 and PW2.

14. The judgments relied upon by the learned counsel for the appellants were rendered on the facts of those cases and would have no bearing in the facts of the instance case. As stated earlier, the Hon'ble Supreme Court in *Kashif's case* [cited supra] had held that non-compliance of Section 52-A of the NDPS Act is only a procedural irregularity and unless prejudice is caused, it would not vitiate the trial. In this case, no prejudice has been shown to be caused to the appellants. Therefore, this Court finds no merit in the submissions made by the appellants and since the prosecution has established the seizure beyond reasonable doubt, the finding of guilt is sustained. However, considering the facts and circumstances of the case, this Court is inclined to reduce the sentence imposed upon the appellants.

15. Accordingly, the Criminal Appeal stands partly-allowed and it is ordered as follows:

(i) The conviction imposed upon the appellants by the learned Principal Special Judge, EC and NDPS Act cases,



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Chennai, vide judgment in C.C.No.132 of 2021 dated 02.02.2023, for the offence under Section 8(c) r/w 20(b) (ii) (C) of the NDPS Act, is confirmed.

(ii) However, the sentence imposed by the trial Court for the said offence i.e., each of the appellant to undergo twelve years rigorous imprisonment is **reduced to ten years rigorous imprisonment and to pay a fine of Rs.1,20,000/- each in default to undergo six months rigorous imprisonment**

(iii) the conviction and sentence imposed upon the appellants for the offence under Section 8(c) r/w 29(1) of the NDPS Act, are confirmed.

(iv) The sentences are ordered to run concurrently.

(v) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now.

(vi) The period of sentence already undergone by the appellants shall be set off under Section 428 Cr.P.C.

04-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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SUNDER MOHAN J.

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To

1. The Principal Special Judge,
EC and NDPS Act cases, Chennai.

2. The Inspector of Police
NIB-CID, Chennai.

3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery Judgment in
CRL A No. 413 of 2023**

04-03-2026