



WEB COPY



CRL A No. 319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24-02-2026

PRONOUNCED ON : 10-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 319 of 2023

1. Chandrasekar

2. Ashish

3. Akshaya Kumar

..Appellants/A1 to A3

Vs

The State Rep By
The Deputy Superintendent of Police
NIB CID, Chennai

..Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment dated 17.03.2023 passed by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai in CC No. 18/2018

For Appellants:

Mr.R.C.Paul Kanagaraj

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor



WEB COPY



CRL A No. 319 of 2023

Judgment

The Criminal Appeal challenges the Judgement dated 17.03.2023 passed in C.C.No.18 of 2018 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, convicting the appellants for the offence under Sections 8(c) r/w 22(b) (ii) of the NDPS Act and sentencing them as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
<i>A1</i>	<i>8(c) r/w 22(b) of the NDPS Act</i>	<i>RI for 4 years and to pay fine of Rs.40,000/-, in default RI for six months</i>
<i>A2</i>	<i>8(c) r/w 22(b) of the NDPS Act</i>	<i>RI for 3 years and to pay fine of Rs.30,000/-, in default RI for six months</i>
<i>A3</i>	<i>8(c) r/w 22(b) of the NDPS Act</i>	<i>RI for 3 years and to pay fine of Rs.30,000/-, in default RI for six months</i>

2.(i) It is the case of the prosecution that on 04.01.2018 at about 17:30 hours, A1 was found in illegal possession of 8 Nos. of LSD weighing 0.08 grams; that on his confession, it was revealed that A2 and A3 were also in possession of contraband; that on 05.01.2018 at about 00:00 hours, A2 was apprehended and was found in possession of 4 Nos. of LSD weighing 0.04 grams; that at about 3:00 hours, on the same day, A3 was apprehended and was found in possession of 4 Nos. of LSD



weighing 0.04 grams and hence, the appellants/A1 to A3 were liable for the offence under Section 8(c) r/w 29(1) and 8(c) r/w 22(b) of the NDPS Act.

(ii) It is the further case of the prosecution that PW1 had received secret information on 04.01.2018 at about 15.30 hours that a person was selling LSD stamps near ICICI Bank, Nungambakkam; that PW1 recorded the information in writing [Ex.P1] and submitted it before the DSP, NIBCID; that thereafter PW1, along with PW2 went to the scene of occurrence with necessary equipments; that A1 was apprehended on the identification by the secret informer and the contraband as stated above was seized; that thereafter PW1 after arresting A1, registered the FIR [Ex.P6] in Cr.No.1 of 2018 under Section 8(c) r/w 22(b) of the NDPS Act; that PW6 conducted the investigation and after examining the witnesses and obtaining the report of the expert, had filed the final report against the appellants/A1 to A3 before the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai



(iii) 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.18 of 2018 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, for trial. The trial Court had framed the charges under Sections 8(c) r/w 22(b) and 8(c) r/w 29(1) of the NDPS Act as against all the accused and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution had examined 6 witnesses as P.W.1 to P.W.6 and marked 18 documents as Ex.P1 to Ex.P27, besides 10 material objects as M.O.1 to M.O.4. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(v) On appreciation of oral and documentary evidence, the trial Court found the appellants not guilty of the offence under Section 8(c) 29(1) of the NDPS Act and found each of them guilty for the offence under Section 8(c) r/w 22(b) of the NDPS Act and sentenced them as



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

3. (i) Mr.R.C.Paul Kanagaraj, learned counsel for the appellants, would submit that a joint communication was sent under Section 50 of the NDPS Act to A2/2nd appellant and two others, which vitiates the search conducted on A2 and consequently, the seizure and therefore, the 2nd appellant ought to be acquitted on that very ground; that the seizure from the 1st appellant/A1 was in a busy area and no independent witnesses were examined by the prosecution and no effort was taken by P.W.1 to examine independent witnesses; and that this raises a doubt with regard to the prosecution case.

(ii) The learned counsel further submitted that the case of the prosecution would show that the occurrence could not have taken place in the manner as alleged by the prosecution; that there was no necessity for P.W.1 to go to their office at Valsaravakkam after seizing the contraband from the 1st appellant/A1 at Nungambakkam instead of going to T.Nagar where the 2nd appellant/A2 is said to have been in possession of LSD



stamps; that the mandatory provisions have not been followed; that two other accused were apprehended along with A2 for possession of contraband and they have been omitted since one of them was the son of a police officer; that the entire prosecution is therefore vitiated for lack of bonafides; that the other circumstances elicited by the defence in their cross-examination would show that the impugned judgment cannot be sustained; that the cross-examination of the analyst [PW3] would show that the analyst had no idea of what a Lysergide is; that since the expert witness was ignorant, her test report cannot be relied upon to hold that the appellants were in possession of prohibited contraband; and that therefore the impugned judgment cannot be sustained.

4. The learned Additional Public Prosecutor *per contra* submitted that minor contradictions cannot be the basis to ignore the evidence of PW1 and the investigating officer PW6; that the contraband seized from the appellants is a psychotropic substance and therefore, as per notification dated 19.10.2001, the appellants were in possession of an intermediate quantity; that the prosecution has established the seizure and had followed the mandatory provisions; that the non-prosecution of two



other accused is because they were not in possession of contraband and no motive can be attributed to the prosecution for their non-prosecution; and that since the analyst has clearly stated that the samples which were tested by her contained LSD, the impugned judgment cannot be faulted, especially in the light of the presumption that can be drawn for the offences under the NDPS Act.

5. As stated above, the prosecution had examined six witnesses. PW1 is the Inspector of Police who received the secret information and had proceeded to the scene of occurrence to arrest the 1st appellant/A1. She was accompanied by PW2, the Special Sub-Inspector of Police. PW3 is the Deputy Director of the Forensic Science Laboratory who had opined that the contraband seized from the appellant contained LSD. PW4 is the Sub-Inspector of Police who went along with PW1 and arrested the 2nd appellant/A2 with two other accused and also would speak about the seizure made from the 2nd appellant/A2 and subsequently from the 3rd appellant/A3. PW5, the witness, who was examined by the prosecution to show that the appellants were in the habit of consuming



the contraband and also traded in it, turned hostile. PW6 is the investigating officer.

6. It is the case of the prosecution that the 1st appellant was arrested on 04.01.2018 at about 5.30 p.m. at a busy place at Nungambakkam, Chennai. P.W.1 had not stated as to why no independent witnesses were examined, though a vague reference is made in the chief examination as if there were no independent witnesses at the scene of occurrence.

7. Be that as it may, on the confession of the 1st appellant/A1, P.W.1 had arrested the 2nd appellant/A2 on the night intervening 04.01.2018 and 05.01.2018 at about 00:00 hours. The 2nd appellant/A2 was found along with two other persons. All the three persons were arrested. However, the prosecution had not proceeded against the two other persons.

8. It is the case of the prosecution that those two persons were not found in possession of any contraband and therefore, they were not made



WEB COPY

an accused in the final report. The arrest memo of those two persons by the names, Dinesh and Raghul were marked by the prosecution as Ex.P13 and Ex.P14, respectively. In both the arrest memos, the reason for arrest is shown as possession of LSD stamps. When P.W.1 was confronted with the above entries made in the arrest memo and as to why those two persons were not made accused in the final report, P.W.1 would state as follows:

“uhFy; kw;Wk; jpnd!; MfpnahUf;F jahu; bra;j ifJ
Fwpg;ghizfspy; mtu;fspk; ,Ue;Jk; vy;/v!;/O !;lhk;g;
vd;w nghijg;bghUs; gwpKjy; bra;ag;gl;ljhF ehd;
Fwpg;gpl;L TwpapUf;fpd;nwd; vd;why; rhpjhd;/
mt;thW gwpKjy; bra;ag;gl;ljhF jtWjyhF
Fwpg;gpl;LtPl;ljhF rhl;rp gpd;du; jhkhf
bjhptpj;jhu;///”

9. The above evidence of P.W.1 does not inspire confidence. It only probalizes the defence case that since one of the two persons omitted is the son of the police officer and at his instance, their names were deleted.



10. In fact PW1 had admitted that one Raghul is the son of a police officer. The relevant portion reads as follows:

“nkw;go uhFy; xU fhty; Jiw mjpfhhpapd; kfd;
vd;why; rhpjhd;/”

If PW1 had stated in the arrest memo that those two persons were in possession of LSD stamps, PW1 ought to have explained how that mistake had crept in. His answer that it was only a mistake without any explanation raises a doubt and probabilises the defense case.

11. That apart, as stated above, the 2nd appellant/A2 was apprehended along with the above two persons and a joint communication was sent under Section 50 of the NDPS Act. It is well settled that when a personal search is made, a separate communication, informing the right of the accused to be searched by a Magistrate or gazetted officer, has to be made. In *State of Rajasthan vs. Parmanand and another*, reported in (2014) 2 SCC (Cri.) 563, the Hon'ble Supreme Court had held that if the joint communication is sent, the mandatory provisions under Section 50 of the NDPS Act, are violated. The relevant observation reads as follows:



WEB COPY



CRL A No. 319 of 2023

"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 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."

12. Therefore, this Court is of the view that the search from the 2nd appellant/A2 is vitiated for the said reason alone. The trial court had acquitted the appellants of the offence of conspiracy. As regards the



seizure from the 1st and the 3rd appellants, it is the prosecution case that 8 Nos. of LSD stamps weighing 0.08 grams were seized from the 1st appellant/A1 and 4 Nos. of LSD stamps weighing 0.04 gms were seized from the 3rd appellant/A3.

13. It is the case of the prosecution that all the stamps were sent for Chemical Analysis, which was done by PW3. PW3 in the Chemical Analysis Report [Ex.P25] has stated that 16 samples were examined by following methods.

- i) Fluorescence
- ii) Chemical Tests
- iii) UV-VIS spectrophotometry and
- iv) Fourier Transform Infrared Spectrometry

14. PW3 had opined that all the 16 stamps were Lysergides. In the cross-examination, she had admitted that she had detected Lysergide during the test conducted and that she did not know what ‘+ *lysergide*’ means. She would also admit that the method adopted by her to detect Lysergide was “fluorescence” and that the said method alone would not



be sufficient to conclude that the samples contained Lysergide. She would also admit that she had assessed the percentage of Lysergide in the samples by using UV-VIS Spectrophotometry method and did not state the percentage in her report as it was not asked by the investigating officer. It is also seen that PW3 has admitted that a chemical test was conducted and had not specified as to what the nature of the chemical test conducted. She would further state that LSD and LSD-25 are the same.

15. From the above, it would be clear that the expert's evidence is also highly doubtful and cannot be the basis to conclude that the appellants were found in possession of the prohibited substances.

16. As stated above, two of the accused were omitted by the prosecution. PW1 had admitted that in the arrest report it was stated that they were in possession of LSD stamps. PW1 had also admitted as stated above that the said Raghul, one of the persons arrested, was the son of a police officer. The evidence of PW1 and the action of the investigating officer in omitting the names of the two other accused leaves much to be desired. The explanation offered by the witnesses that they were not in



possession of contraband is contrary to their own arrest memo. Therefore the prosecution lacks bonafides and the investigating officer has chosen a 'pick and choose' method to prosecute the appellants.

17. It is in the light of this evidence, the non-examination of independent witnesses for the arrest and seizure made from the 1st appellant/A1, which happened in a busy place and the arrest and seizure from the 3rd appellant/A3, assumes significance. The police, though, had stated that no witness had come forward, have not specified as to the efforts taken to examine independent witnesses. Though it is well settled that independent witnesses are not necessary in all cases and the evidence of police witnesses cannot be viewed with suspicion, in this case, as stated above, the conduct of PW1 and the investigating officer [PW6] do not inspire confidence and therefore, the non-examination of independent witnesses in this case is fatal to the prosecution.

18. Therefore, for all the above reasons, this Court is of the view that the prosecution has failed to establish the fact that the appellants were in possession of the contraband beyond reasonable doubt.



CRL A No. 319 of 2023

Consequently, the appellants are entitled to the benefit of doubt and the impugned judgment is liable to be set aside.

19. In the result, the Criminal Appeal is allowed. The judgment dated 17.03.2023 in C.C.No.18 of 2018 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, convicting and sentencing the appellants for the offences under Section 8(c) r/w 22(b) of the NDPS Act, is set aside. The appellants/accused are acquitted of the charge. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

10-03-2026

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

ars



WEB COPY



CRL A No. 319 of 2023

SUNDER MOHAN J.

ars

To

1. The I Additional Special Court
for Exclusive Trial of Cases under NDPS Act,
Chennai.

2. The Deputy Superintendent Of Police
NIB CID, Chennai.

3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery judgment in
CRL A No. 319 of 2023**

10-03-2026

Page 16 of 16