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Crl.A. No.755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A. No. 755 of 2023

1. Raja Anand

2. Hariharan

..Appellants

Vs.

State rep. by
The Inspector of Police,
NIB CID, Chennai,
Crime No. 86 of 2019.

..Respondent

Prayer : Criminal Appeal as against the Judgment dated 07.07.2023 passed
in C.C. No. 195 of 2022 by the learned Special Judge, I Additional Special
Court for Exclusive trial of cases under NDPS Act, Chennai.

For Appellants :: Mr.C.S.S. Pillai for A1

For Respondent :: Mr. Raja Kumar,
Addl. Public Prosecutor



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ORDER

This matter is posted today before this Court under the caption

'For Being Mentioned' at the instance of the Registry.

2. This Court has perused the Judgment dated 12.02.2026 and found that there are certain typographical errors in the Judgment. The date of Judgment of the Special Court in the prayer and at paragraph nos. 1 and 7 is wrongly mentioned as “07.07.2022” instead of “**07.07.2023.**” Hence, the Registry is directed to carry out the necessary correction and issue an order copy afresh forthwith.

12.03.2026

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SUNDER MOHAN,J.

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J U D G M E N T

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The criminal appeal is filed challenging the judgment dated 07.07.2022 passed in C.C. No. 195 of 2022 by the learned Special Judge, I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai. The Trial Court convicted each one of the appellants under Section 8(c) r/w 22(b) of NDPS Act and sentenced them to undergo 2 years rigorous imprisonment and to pay a fine of Rs.25,000/- carrying a default sentence of rigorous imprisonment for a period of three months.

2.(i) It is the case of the prosecution that the respondent received secret information stating that the appellants were in possession of MDMA tablets and LSD stamps for the purpose of sale and personal consumption; that based on secret information, P.W.1, who was the Sub Inspector of Police attached to the respondent Police Station, went to the place of occurrence, which is a private hotel and at about 23.00hrs, on 23.08.2019, on identification by the secret informant, the appellants were apprehended at about 12.30a.m. on 24.08.2019 at the bar of the hotel; that after complying with the mandatory requirement under Section 50 of NDPS



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Act, the appellants were searched; that the 1st appellant was found in possession of 3.937 gms of MDMA tablets and the 2nd appellant was found in possession of LSD stamps (2 Nos.) weighing 0.040gms; that thereafter, P.W.1 registered the FIR and on his report under Section 57 of NDPS Act, P.W.4 took up the investigation and filed the final report for the offences under Sections 8(c)r/w 22(b) and 8(c) r/w 29(1) of NDPS Act.

2(ii). The prosecution had examined four witnesses as P.W.s 1 to 4 and marked Exs. P1 to P15 and M.O.s 1 and 2. The appellants neither examined any witness nor marked any document. The trial Court, based on oral and documentary evidence adduced, convicted the appellants under Section 8(c) r/w 22(b) of NDPS Act and sentenced them as aforesaid.

3. Learned counsel for the appellants would submit that the 2nd appellant is no more, which fact is confirmed by the learned Additional Public Prosecutor and he has also produced the death certificate of the 2nd appellant dated 28.07.2025. Hence, the appeal filed by the 2nd appellant is dismissed as abated.



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4. Learned counsel for the 1st appellant would submit that the prosecution had failed to prove the seizure in the manner known to law; that the mandatory requirement of informing the appellants of their right to be searched by a Gazetted Officer under Section 50 of NDPS Act had not been complied with; that the contraband was sent to forensic lab for analysis after a delay of 14 days contrary to the provisions of the Act and no evidence was collected by the prosecution to prove that the possession was for the purpose of sale.

5. Learned Additional Public Prosecutor, per contra, would submit that both the appellants were apprised of their right to be searched by a Gazetted Officer and after understanding the consequence, they had agreed to be searched by P.W.1; that no prejudice has been caused to the appellants and hence, the joint notice under Section 50 of NDPS Act cannot vitiate the seizure and the conviction of the appellants. Learned Additional Public Prosecutor would further submit that non-examination of any independent witness is not fatal to the prosecution case as the evidence of the Police Officers cannot be viewed with suspicion; and that in the absence of any



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cross-examination to discredit their version, the impugned judgment cannot be faulted.

6. As stated above, the prosecution examined four witnesses as P.W.s 1 to 4. P.W.s 1 and 2 went to the place of occurrence on information given by a secret informant. P.W.3 is the Deputy Director of Forensic Sciences Laboratory, who opined that the contraband seized from the appellants were MDMA tablets and LSD stamps. P.W.4 is the Investigating Officer, who filed the final report. Admittedly, the seizure was made at a bar attached to a private hotel. There is no reason why no independent witnesses were examined by the prosecution though a vague explanation was given stating that independent persons, who were at the bar were not willing to be a witness. Be that as it may, it is seen from Ex.P2, the information given by P.W.1 to the appellants as regards their right to be searched by a Gazetted Officer that a joint communication was given to both the appellants. It is also seen that a typed copy of Ex.P2 had been printed at the Police Station and taken at the time of seizure as admitted by P.W. 1 in his cross-examination. P.W.1 admitted that only a joint communication was



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given to both the accused and the seizure was made pursuant to the personal search. The Honourable Supreme Court in the judgment rendered in ***State of Rajasthan V. Parmanand and Another*** reported in **2014 (5) SCC 345** had held that joint communication to two or more of the accused under Section 50(1) of NDPS Act would create confusion and would dilute the statutory right of the accused to be searched in the presence of a Gazetted Officer or before a nearest Magistrate. The Honourable Supreme Court, therefore, held as follows:

“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



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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 Parnanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated. “

7. Since the provisions of Section 50 of NDPS Act are mandatory and non-compliance of the same would vitiate the seizure and conviction, this Court is inclined to set aside the impugned judgment on that sole ground. Accordingly, the impugned judgment dated 07.07.2022 is set aside and the appeal is allowed. The 1st appellant is acquitted of the charges against him. Fine amount, if any paid, shall be refunded. Bail bonds, if any, executed, shall stand discharged.

Neutral Citation: Yes/No

12.02.2026

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SUNDER MOHAN,J.

nv/dk

To

1. The Special Judge,
I Additional Special Court for
Exclusive Trial of Cases under
NDPS Act, Chennai.
2. The Inspector of Police,
NIB CID, Chennai.
3. The Public Prosecutor,
High Court, Madras.

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