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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM
THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL RC No. 2658 of 2025

Francis
S/o. Mr. Gnanamanikam,
No.14, Anthoniyar Koil Street,
Melaouthurai, Neravi, Karaikal.

..Petitioner(s)

Vs

The State rep by
The Inspector of Police,
Kalapet Police Station,
Puducherry.
Crime No.166 of 2011.

..Respondent(s)

PRAYER

Criminal Revision Case filed under Sec.438 and 442 of B.N.S.S., 2023, to call for the records in Crl.A.No.38 of 2023 on the file of the Honble III Additional Sessions Judge, Puducherry and set aside the same and allow this revision petition considering the facts and circumstances of the case.

For Petitioner(s):	Mr. V.S.Senthil Kumar
For Respondent(s):	Mr.M.V.Ramachandra Murthy Public Prosecutor, Govt. of Puducherry

ORDER

The revision challenges the judgment dated 21.02.2025 passed in Crl.A.No. 38 of 2023 on the file of the learned III Additional Sessions Judge, Puducherry, confirming the judgment passed in S.T.C.No. 2574 of 2012, on the file of the learned Judicial Magistrate-II, Puducherry, dated 25.04.2023



convicting the petitioner for the offence under Sec.20(b)(ii)(A) of NDPS Act and sentencing him to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for one month.

2. The gist of the prosecution case is that on 20.10.2011 at about 16.45 hours, at the main gate of Central Prison, Kalapet, Puducherry, the petitioner, a Jail Warder was found carrying ganja leaves weighing about 5.34 grams in his motorcycle in contravention of the provisions of the Act; that based on the complaint given by the Superintendent of Jail, Central Prison, Kalapet, P.W.3, the F.I.R. was registered on 21.10.2011 marked as Ex.P1 in Crime No.166 of 2011 for the offence under Sec.27 of NDPS Act and subsequently altered into Sec.20(b)(ii)(A) of NDPS Act; that the contraband, which was taken by P.W.1 was seized by the Investigating Officer, P.W.8 on 22.10.2011 by Ex.P2 mahazar; that the sample was sent for analysis; that P.W.6, had sent a report marked as Ex.P3 stating that leaves contained ganja; and that thereafter, the Investigating Officer, on conclusion of investigation, filed a final report for the aforesaid offence.

3. The prosecution examined 8 witnesses to prove its case and marked documents Ex.P1 to Ex.P7. The trial court after considering the evidence on record, convicted the petitioner as aforesaid, which was confirmed by the appellate court in Crl.A.No. 38 of 2023.



4. The learned counsel for the petitioner would submit that the judgments of the courts below are liable to be set aside; that though it is P.W.1's version that he found the petitioner had ganja in his vehicle on 20.10.2011, the complaint was lodged only on 21.10.2011; that the seizure was not made from the petitioner; that the seizure by the police was made from P.W.3, who allegedly had taken the contraband from the petitioner and kept it in his possession; that the sample was sent for chemical analysis two months after the alleged occurrence; and that the vehicle, from which the alleged contraband was said to have been taken by P.W.1 has not been identified and seized by the respondent and that considering all the infirmities, the judgments are liable to be set aside.

5. The learned Public Prosecutor [Puducherry], *per contra*, would submit that the complaint was lodged by the Superintendent of Jail; that there is no reason to suspect the veracity of the said complaint; that leaves in possession of the petitioner were found to contain ganja; and that considering the nature of offence and the fact that there is no infirmity in the impugned judgments, this Criminal Revision Case may be dismissed.

6. The prosecution as stated earlier had examined 8 witnesses. P.W.1, is the Jail Warder, who first found that the petitioner was in possession of the said



contraband in his vehicle; P.W.2, was working as a Constable and had handed over a cover sent by PW3 to the investigating officer; P.W.3, was working as Superintendent of Jail. He had lodged the complaint based on which the F.I.R. was registered. P.W.4 and P.W.5, are seizure mahazar witnesses; P.W.6, issued the chemical analysis report marked as Ex.P3; P.W.7, is the Inspector of Police, who registered the F.I.R; and PW8, is the investigating officer, who filed the final report.

7. The fact that the petitioner was found in possession of contraband, is sought to be established through evidence of P.W.1 and P.W.3. In fact, it was P.W.1, who had intercepted the petitioner when he attempted to enter the Jail with the contraband in his vehicle. It is the case of P.W.1, the contraband was kept in the two wheeler of the petitioner. It is also his case that he was unable to note the registration number of the vehicle, since the petitioner had fled with the vehicle after the contraband was taken away by P.W.1.

8. It is the further case of prosecution that P.W.1 had informed about the petitioner's possession of contraband and handed over the same to P.W.3. P.W.3 for reasons best known to him had not chosen to give the complaint on the same day. The contraband was in his possession till the investigating officer received it from him. P.W.3 gave the complaint the next day. The contraband was therefore seized from the possession of P.W.3. P.W.3 in his cross-



examination would state that the petitioner had fled away from the scene of occurrence after leaving the vehicle near the jail premises.

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9. The Investigating Officer strangely had not chosen to identify and seize the vehicle, by which the petitioner is said to have been transported the contraband. It is not the case of P.W.1 that the contraband was in possession of the petitioner. Therefore, the vehicle from which the alleged contraband was found ought to have been seized.

10. Further, there are contradictions in the evidence of P.W.1 and P.W.3 as regards the manner in which the alleged occurrence took place. PW1 had stated that the petitioner fled with the vehicle, whereas, PW3 had stated that the petitioner abandoned the vehicle and fled away from the place. There is no explanation for P.W.3, for not giving the complaint on the same day. Further, there is no explanation for not sending the contraband for chemical analysis till 19.12.2011. In fact, the Investigating Officer in his cross-examination had stated that none of the witnesses have spoken about the two wheeler of the petitioner. But, it is the version of all the witnesses that they had informed the investigating officer about the two wheeler. In the light of the above infirmities in the evidence adduced on the side of the prosecution, it is highly unsafe to convict the petitioner for the aforesaid offences.



11. The trial Court and the appellate Court, while convicting the petitioner, have not taken into consideration all the above aspects, which are material and raises a serious doubt in the prosecution case. Therefore, this Court finds that the judgment of the Courts below are perverse and are liable to be set aside.

12. Accordingly, the impugned judgment passed in CrI.A. No. 38 of 2023 on the file of learned III Additional Sessions Judge, Puducherry dated 21.02.2025, confirming the judgment passed in S.T.C.No. 2574 of 2012, on the file of the learned Judicial Magistrate-II, Puducherry, dated 25.04.2023, is set aside and this Criminal Revision Case stands allowed. The petitioner stands acquitted of the charge. The fine amount, if any paid by the petitioner shall be refunded.

09-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

RPP/ars

To

1. The III Additional Sessions Judge, Puducherry.
2. The Inspector of Police, Kalapet Police Station, Puducherry.
3. The Public Prosecutor, High Court, Madras.



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SUNDER MOHAN J.

RPP/ars

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