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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	12.09.2025
Pronounced On	:	15.10.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos. 212 of 2020, 172 of 2023, 293 of 2021, 331 of 2023, 396, 397, 399 & 400 of 2023, 507 of 2023 and 94 of 2024, 534 of 2022, 551 of 2023, 588 of 2023, 724 of 2023, 773, 953 of 2023, 265 of 2024, 322 of 2023, 269 and 558 of 2023

Crl.A.(MD).No.212 of 2020:

Ganesan

... Appellant/Sole Accused

Vs.

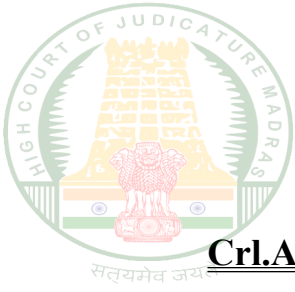
The State rep by its,
The Deputy Superintendent of Police,
NIB-CID, Dindigul,
(In Crime No.42 of 2019)

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.365 of 2019 dated 16.06.2020 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, and set aside the same.

For Appellant : Mr.A.Robinson

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



Crl.A.(MD).No.172 of 2023:

P.Murugan @ PoliMurugan

... Appellant/Accused

Vs.

The State rep by its,
The Inspector of Police,
NIB-CID, Theni,
(In Crime No.101 of 2019)

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.429 of 2019, dated 12.03.2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, and to set aside the same.

For Appellant : Mr.T.A. Ebenezer

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).No.293 of 2021:

Tamilselvan

... Appellant/Sole Accused

Vs.

The State rep by,
The Inspector of Police,
NIB CID, Theni
Theni District.
Crime No.85 of 2019

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to allow this appeal and acquit the appellant from all the charges by setting aside the impugned judgment passed by
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the learned I Additional Special Judge for NDPS Act Cases, Madurai, in
C.C.No.428 of 2019 dated 29.06.2021.

For Appellant : Mr.J.Selvam

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).No.331 of 2023:

Periyakaruppan ... Appellants/ Sole Accused

Vs.

The State rep by its,
The Inspector of Police,
NIB-CID, Dindigul,
(In Crime No.14 of 2021) ... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.337 of 2021, dated 22.11.2022 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, and to set aside the same.

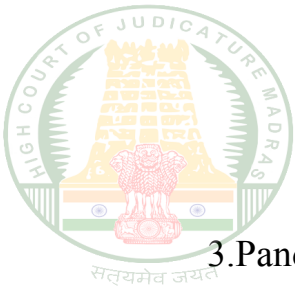
For Appellant : Mr.T.Balachandran

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).Nos.396, 397, 399 and 400 of 2023:

1.Priya ... Appellant in Crl.A.(MD).No.396 of 2023
/Accused No. 4

2.Raman ... Appellant in Crl.A.(MD).No.397 of 2023
/Accused No. 1



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3.Pandi

... Appellant in Crl.A.(MD).No.399 of 2023
/Accused No. 2

4.Pandiammal

... Appellant in Crl.A.(MD).No.400 of 2023
/Accused No. 3

Vs.

The Inspector of Police,
Madurai NIB-CID Police Station,
Madurai District.
(Crime No.139 of 2015)

... Respondent in all Crl.As./Complainant

COMMON PRAYER: Criminal Appeals have been filed under Section 374 (2) of Criminal Procedure Code, to call for the records relating to the judgment passed by the learned II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.160 of 2016 vide his judgment dated 29.03.2023 convicting the appellants under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act, and sentencing them to undergo 10 year RI and to pay a fine of Rs.1,00,000/- and in default to undergo 12 months SI and to set aside the same and consequently, acquit the appellants.

For appellant : Mr.M.Pitchai Muthu

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
(in all cases)

Crl.A.(MD).Nos.507 of 2023 & 94 of 2024:

Sankar

... Appellant/Accused No.2
(In Crl.A.(MD).No.507 of 2023)

Vigneshwaran @ Vicky

... Appellant/Accused No.1

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(In CrI.A.(MD).No.94 of 2024)

Vs.

The State rep by its,
The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(In Crime No.919 of 2021)

.... Respondent/Complainant
(In both Appeals)

COMMON PRAYER : Criminal Appeals have been filed under Section 374(2) of the Criminal Procedure Code, to call for the records in C.C.No. 30 of 2022, dated 26.05.2023 on the file of the Additional District and Sessions Court/Special Court for EC and NDPS Act Cases, Pudukkottai, and set aside the same by acquitting the appellants.

For Appellant : Mr.G.Karuppasamy Pandian
(In CrI.A.(MD).No.507 of 2023)

Mr.K.Jeyaraman
(In CrI.A.(MD).No.94 of 2024)

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

CrI.A.(MD).No.534 of 2022:

V.Radha

... Appellant/ Sole Accused

Vs.

The State rep by its,
The Inspector of Police,
NIB-CID,
Theni District.
(In Crime No.22 of 2020)

... Respondent /Complainant

PRAYER : Criminal Appeal have been filed under Section 374(2) of the



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Criminal Procedure Code, to call for the records and to allow the above appeal and set aside the conviction and sentence passed by the judgment dated 25.07.2022 in C.C.No.138 of 2020 of the learned I Additional District Judge for NDPS Act Cases at Madurai, and acquit the appellant herein of all the charges.

For Appellant : Mr.Karupasamy Pandian
for Mr.NA.Manimaran

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).No.551 of 2023:

1.Pownthai

2.Lakshmi ... Appellants/Accused No.1&2

Vs.

The State rep by its,
The Inspector of Police,
NIB-CID, Madurai,
(In Crime No.81 of 2016)

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.333 of 2016 relating to the judgment dated 20.01.2023, passed by the District and Sessions Court for Communal Clash Cases, Madurai, and to set aside the conviction imposed on the appellants/Accused No.1&2.

For Appellants : Mr.S.Kanagaraj
for Mr.R.Alagumani &
Mrs.G.Prabhahari,
Legal Aid Counsel



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For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A(MD).Nos.588 of 2023:

1.C.Prabhakaran

2.S.Ramkumar ... Appellant/Accused Nos.1&2

Vs.

The State rep by,
The Inspector of Police,
Allinagaram Police Station,
Theni District.
(In Crime No.621 of 2021)

... Respondent/Complainant

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records and set aside the conviction and sentence passed against them by the learned Principal Special Court for NDPS Act Cases, Madurai, dated on 31.05.2023 in C.C.No.403 of 2022 by allowing the present appeal.

For Appellants : Mr.K.S.Durai Pandian

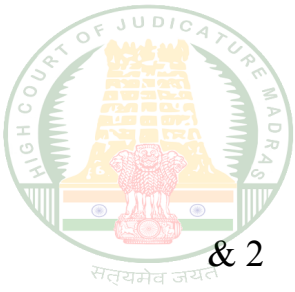
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).No.724 of 2023:

1. Duraipandi

2. Prabu ... Appellants/Accused No.1

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Vs.

The State rep by its,
The Inspector of Police,
NIB-CID, Theni,
(In Crime No.636 of 2016)

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records in connection with C.C.No.192 of 2017 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, dated 18.11.2022, and set aside the same.

For Appellants : Mr.S.Ramsundarvijayraj

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A.(MD).Nos.773 & 953 of 2023 and 265 of 2024:

Amaresan ... Appellant/Accused No.2
(In Crl.A(MD)No.773 of 2023)

Petchiammal ... Appellant/Accused No.3
(In Crl.A(MD)No.953 of 2023)

1.Sivanesh @ Sivaneshwaran

2.Amaithikannan ... Appellants/Accused Nos.1 & 4)
(In Crl.A(MD)No.265 of 2024)

Vs.

State through,
The Inspector of Police,
NIB CID, Theni, Theni District.
Crime No.42 of 2020

... Respondent/Complainant
(In all Appeals)

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COMMON PRAYER : Criminal Appeals have been filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order in C.C.No.308 of 2020, dated 05.06.2023, on the file of the II Additional Special Court for NDPS Act Cases, Madurai, by allowing the appeals.

For Appellant : Mr.K.Samidurai
(In CrI.A(MD)No.773 of 2023)

: Mr.R.Alagumani
(In CrI.A(MD)No.953 of 2023)

: Mr.V.K.Sathiamurthy
(In CrI.A(MD)No.265 of 2024)

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
(In all Appeals)

CrI.A.(MD).No.322 of 2023

Chinnadurai
Accused

... Appellant/Sole

Vs.

State rep by
The Inspector of Police,
NIB-CID,
Dindigul
(Crime No.122 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeal has been filed under Section 374 (2) of



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Criminal Procedure Code, to call for the records in C.C.No.59 of 2016 relating to the judgment dated 01.09.2022 passed by the II Additional Special Court for NDPS Act cases, Madurai and set aside the judgment of conviction passed against the appellant.

For appellant : Mr.K.Madhu

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

Crl.A(MD)No. 269 & 558 of 2023

Andichamy @ Andi

... Appellant
in Crl.A.(MD).No.269 of 2023

Sivanammal @ Sivamalar

... Appellant
in Crl.A.(MD).No.558 of 2023

Vs.

State rep by
The Inspector of Police,
Karimedu Police Station,
Madurai.
(Crime No.368 of 2013)

... Respondent in all Crl.As.

COMMON PRAYER: Criminal Appeals are filed under Section 374 (2) of Criminal Procedure Code, to call for the records and set aside the impugned judgment passed in C.C.No.228 of 2013, dated 24.02.2023, by the learned Principal Special Court for NDPS Act Cases, Madurai.

For appellant : Mr. M. Jegadeesh Pandian

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



COMMON JUDGMENT

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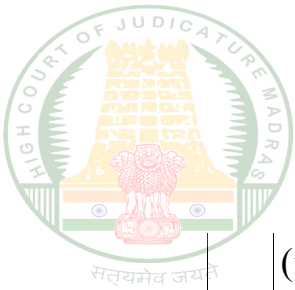
Summary of discussion:

Sl. No	Summary of Discussions	Paragraph Nos
1	Prelude	1-1.5
2	Brief facts of CrI.A.(MD).No.212 of 2020	2.1 – 2.1.3
	(i) Submission of the learned counsel for the appellant	2.2 – 2.2.3
	(ii) Submission of the learned Additional Public Prosecutor	2.3 – 2.3.4
3	Brief facts of CrI.A.(MD).No.172 of 2023	3.1 – 3.1.4
	(i) Submission of the learned counsel for the appellant	3.2 – 3.2.4
	(ii) Submission of the learned Additional Public Prosecutor	3.3 – 3.34
4	Brief facts of CrI.A.(MD).No.293 of 2021	4.1 – 4.1.4
	(i) Submission of the learned counsel for the appellant	4.2 – 4.2.2
	(ii) Submission of the learned Additional Public Prosecutor	4.3 – 4.3.3
5	Brief facts of CrI.A.(MD).No.331 of 2020	5.1 – 5.1.4
	(i) Submission of the learned counsel for the appellant	5.2 – 5.2.2
	(ii) Submission of the learned Additional Public Prosecutor	5.3
6	Brief facts of CrI.A.(MD).Nos.396, 397, 399 and 400 of 2023	6.1 – 6.1.5
	(i) Submission of the learned counsel for the appellants	6.2 – 6.2.5



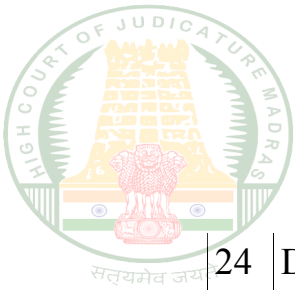
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	(ii)	Submission of the learned Additional Public Prosecutor	6.3 – 6.3.3
7		Brief facts of Crl.A.(MD).Nos.507 of 2023 and 94 of 2024	7.1 – 7.1.4
	(i)	Submission of the learned counsel for the appellants	7.2 – 7.2.9
	(ii)	Submission of the learned Additional Public Prosecutor	7.3 – 7.3.4
8		Brief facts of Crl.A.(MD).No.534 of 2022	8.1 – 8.1.5
	(i)	Submission of the learned counsel for the appellant	8.2 – 8.2.2
	(ii)	Submission of the learned Additional Public Prosecutor	8.3 – 8.3.2
9		Brief facts of Crl.A.(MD).No.551 of 2023	9.1 – 9.1.3
	(i)	Submission of the learned counsel for the appellant	9.2 – 9.2.8
	(ii)	Submission of the learned Additional Public Prosecutor	9.3 – 9.3.4
10		Brief facts of Crl.A.(MD).No.588 of 2023	10.1 – 10.1.6
	(i)	Submission of the learned counsel for the appellant	10.2 – 10.2.5
	(ii)	Submission of the learned Additional Public Prosecutor	10.3 – 10.3.2
11		Brief facts of Crl.A.(MD).No.724 of 2023	11.1 – 11.1.4
	(i)	Submission of the learned counsel for the appellant	11.2 – 11.2.3
	(ii)	Submission of the learned Additional Public Prosecutor	11.3 – 11.3.2
12		Brief facts of Crl.A.(MD).No.773, 953 of 2023 and 265 of 2024	12.1 – 12.1.4
	(i)	Submission of the learned counsel for the appellant	12.2 – 12.2.9



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	(ii)	Submission of the learned Additional Public Prosecutor	12.3 – 12.3.6
13		Brief facts of CrI.A.(MD).No.322 of 2023	13.1 – 13.1.4
	(i)	Submission of the learned counsel for the appellant	13.2 – 13.2.9
	(ii)	Submission of the learned Additional Public Prosecutor	13.3 – 13.2.9
14		Brief facts of CrI.A.(MD).No.269 & 558 of 2023	14.1 – 14.1.5
	(i)	Submission of the learned counsel for the appellant	14.2 – 14.2.2
	(ii)	Submission of the learned Additional Public Prosecutor	14.3 – 14.3.1
15		Further argument about recovered contraband without flowering or fruiting tops would come under the definition of Ganja under Section 2(iii) (b) of the NDPS Act 1985	15
16		Points for determination	15.A
17		General Discussion on the compliance of Section 42 of the NDPS Act	16 – 16.5
18		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.212 of 2020	16.6 – 16.6.6
19		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.172 of 2023	16.7 – 16.7.2
20		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.293 of 2021	16.8 – 16.8.4
21		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.331 of 2023	16.9 – 16.9.2
22		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.396, 397, 399 & 400 of 2023	16.10
23		Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.507 of 2023 & 94 of 2024	16.11-16.11.2



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24	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.534 of 2022	16.12-16.12.2
25	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.551 of 2023	16.13
26	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.588 of 2023	16.14-16.14.2
27	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.724 of 2023	16.15-16.15.2
28	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.773, 953 of 2023 & 265 of 2024	16.16-16.16.3
29	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.322 of 2023	16.17-16.17.3
30	Discussion on the compliance of Section 42 of the NDPS Act in CrI.A.(MD).No.269 & 558 of 2023	16.18-16.18.2
31	General Discussion on the compliance of Section 50 of the NDPS Act.	17-17.4.4
32	Consideration of the precedents	17.5-17.7
33	General Discussion on the presence of the Crime Number in the sample or arrest memo	18-18.6
34	Discussion on the Non-Examination of the independent witnesses	19-19.3
35	Discussion on the Non-Examination of the independent witnesses in CrI.A.(MD).No.172 of 2023	19.3.1
36	Discussion on the Non-Examination of the independent witnesses in CrI.A.(MD).No.551 of 2023	19.3.2
37	Discussion on the Non-Examination of the independent witnesses in CrI.A.(MD).No.588 of 2023	19.3.3



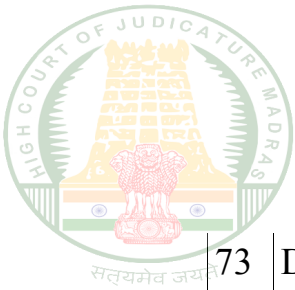
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38	Discussion on the Non-Examination of the independent witnesses in Crl.A.(MD).Nos.773, 953 of 2023 and 265 of 2024	19.3.4
39	Discussion on the delay in producing the contraband	20-20.3
40	Discussion on the delay in producing the contraband in Crl.A.(MD).No.212 of 2020	20.3.1
41	Discussion on the delay in producing the contraband in Crl.A.(MD).No.293 of 2021	20.3.2
42	Discussion on the delay in producing the contraband in Crl.A.(MD).No.588 of 2023	20.3.3
43	Discussion on the compliance of Section 52 A of NDPS Act	20.4 – 20.4.3
44	Discussion on maintainability of the conviction under Section 8(C) r/w 20(b)(ii)(c) of the NDPS Act after acquittal under Section 25 and 29 of the NDPS Act.	21 – 21.2
45	Discussion on the maintainability of conviction in all cases under Section 8(C) r/w 20(b)(ii)(c) of the NDPS Act without proof of recovered contraband with flowering or fruiting tops of Ganja	23 – 23.1
46	Submission of the appellant counsel	23.2 – 23.2.2
47	Submission of the learned Additional Public Prosecutor	23.3 – 23.3.3
48	Reply argument by the learned counsel for the appellants	23.4 – 23.4.2
49	Discussion on the Taxonomy	23.5 – 23.5.3.4
50	Discussion on Pharmacology of Hemp	23.6 – 23.6.8
51	History of Penal provision of the Hemp cultivation	23.7 – 23.8.6
52	Principles to interpret the provision of NDPS Act 1985	23.9 – 23.9.2
53	Discussion on the definition of Ganja	23.10 – 23.10.12



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54	Burden of proof	23.11 – 23.11.6
55	Calculation of the weight	23.12 – 23.12.5
56	Parity	23.13
57	Discussion on the merits of the case	23.14-23.14.8
58	Discussion on the principle of Hirasingh Case	23.15 – 23.18
59	Conclusion on conviction	24 – 24.2
60	Discussion on the sentence of imprisonment	25
61	Discussion on the sentence of imprisonment in Crl.A.(MD).No.212 of 2020	25.1
62	Discussion on the sentence of imprisonment in Crl.A.(MD).No.172 of 2023	25.2
63	Discussion on the sentence of imprisonment in Crl.A.(MD).No.293 of 2021	25.3
64	Discussion on the sentence of imprisonment in Crl.A.(MD).No.331 of 2023	25.4
65	Discussion on the sentence of imprisonment in Crl.A.(MD).Nos.396, 397, 399 and 400 of 2023	25.5-25.5.4
66	Discussion on the sentence of imprisonment in Crl.A.(MD).Nos.507 of 2023 and 94 of 2024	25.6-25.6.2
67	Discussion on the sentence of imprisonment in Crl.A.(MD).No.534 of 2022	25.7
68	Discussion on the sentence of imprisonment in Crl.A.(MD).No.551 of 2023	25.8
69	Discussion on the sentence of imprisonment in Crl.A.(MD).No.588 of 2023	25.9
70	Discussion on the sentence of imprisonment in Crl.A.(MD).No.742 of 2023	25.10
71	Discussion on the sentence of imprisonment in Crl.A.(MD).Nos.773, 953 of 2023 and 265 of 2024	25.11-25.11.3
72	Discussion on the sentence of imprisonment in Crl.A.(MD).No.322 of 2023	25.12



73	Discussion on the sentence of imprisonment in CrI.A.(MD).Nos.269 and 558 of 2023	25.3 – 25.3.2
74	Details of the modified conviction and sentence of imprisonment	26
75	Final conclusion in each appeal	27- 27.13

Prelude:

Allowing illegality to be perpetuated by confining in prison without bail, conviction and sentence of imprisonment for ten years and minimum fine of one lakh under the NDPS Act of various accused for the possession of the commercial quantity of Ganja without weighing psychoactive parts of the hemp mentioned in the definition of Ganja under section 2(ii) of NDPS Act and weighing the whole hetero-genic mixture of flowering or fruiting tops of the cannabis plant, luxuriant leaves, seeds, stems and stalks, amounts to deprivation of the fundamental right of the accused of a fair trial. The Hon'ble Supreme Court in various cases has held that if the perpetual illegality is brought to the knowledge of the court, it is the duty of the Constitutional Court, to obliterate such illegality by bringing the remedial measures and not allowing the illegality to continue. This proposition is fortified in the following decision of the Hon'ble Supreme Court in **2015 (2) SCC 591**,



2010 (11) SCC 455 and 2011 (3) SCC 436

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1.1. It is the duty of this court to recall the following ever living concept of LORD DIPLOCK while interpreting the provision of the “Misuse of Drugs Act 1971” in the case of **Directorate of Prosecution (Respondent) and Goodchild (Appellant)** reported in 1978 (1) WLR 578, “*A man should not be gaoled upon an ambiguity*”.

1.2. Similar circumstances are faced by this Court in these appeals *to maintain the conviction for the possession of the Ganja under the category of commercial quantity.*

1.3. All these appeals are not related to the same occurrence. In each appeal, the appellant was either nabbed while the appellant was in illegal possession of “Ganja” in the occurrence place or during transit in a vehicle. The quantity of Ganja also varies from the limit of commercial quantity i.e., ranging from 20 kg to 30 kg. The date, place of occurrence and crime number are different. But in all cases, vehement argument is made by the Learned Respective Counsel for the Appellants about the ongoing illegality in convicting the appellants like accused persons as if

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committing offences under section 8 (c) r/w 20(2) (b) (ii) (c) of the NDPS Act for possession of commercial quantity of “Ganja” without proof of the constituents of definition of Ganja as stipulated under section 2(ii) of NDPS Act. Since, this court is going to make a detailed discussion, there is no need to extract the definition of Ganja as defined under NDPS Act. On one side, the issue has wider ramification over pending cases either in the trial stage or at the appellate stage and on the other side is the on-going practice of convicting accused with such harsh punishment even when the definition of Ganja was not proved. Therefore, situation demands clubbing of all cases to examine on the issue of sustainability of conviction under section 8(c) r/w 20 (b) (ii) (C) of NDPS Act for possession of Ganja and the minimum punishment of 10 years and fine of Rupees one Lakh without any bail by virtue of section 37 of NDPS Act. To address and decide once for all and also to give prospective guidelines to the investigating agency and prosecuting agency and also reminding the conscious duty of Learned Judges of Special Court dealing with such cases, to avoid further infraction of fundamental right of the accused for fair trial, as enshrined under Article 21 of the Constitution of India.

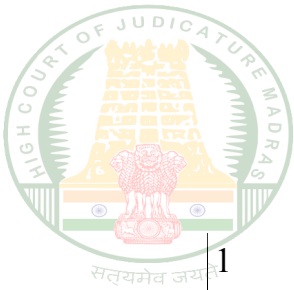


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1.4. In all cases, Learned Additional Public Prosecutors namely Thiru.Meenakshisundaram and Thiru.Senthil Kumar fairly addressed the issue without disputing the factual aspect after perusing the entire records and they only argued for upholding the conviction by treating the recovered contraband as commercial quantity on the basis of the object of NDPS Act and interpreting various provision of NDPS Act and argued that the recovered Ganja satisfied the constituents of the definition of Ganja.

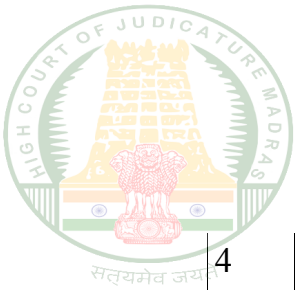
1.5. With this prelude, this Court dispassionately likes to addresses the remaining points raised by the Learned Counsel for all appellants and Learned Additional Public Prosecutors in all aspects apart from the core issue of maintainability of conviction for possession of Ganja either under the category of commercial quantity or under the category of below commercial quantity.

Sl.No	Criminal Appeal No.	Subject matter of appeal
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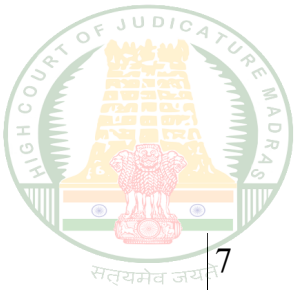
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1	Crl.A.(MD).No.212 of 2020	The appellant/sole accused in C.C.No.365 of 2019 on the file of the II Additional Special Court for NDPS Act Cases, Madurai , has filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 21 kg of ganja and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 1 year Rigorous Imprisonment.
2	Crl.A.(MD).No.172 of 2023	The appellant/Sole Accused in C.C.No.429 of 2019 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, dated 12.03.2021 , has filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 24 kg of ganja and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 6 months Simple Imprisonment
3	Crl.A.(MD).No.293 of 2021	The appellant/sole accused in C.C.No.428 of 2019 on the file of the I Additional Special Judge for NDPS Act Cases, Madurai , has filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 22 kg of ganja and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 6 months Simple Imprisonment



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4	Crl.A.(MD).No.331 of 2023	The appellant/Sole Accused in C.C.No.337 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai dated 22.11.2022, has filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 22 kg of ganja and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 12 months Simple Imprisonment
5	Crl.A.(MD).Nos.396, 397, 399 & 400 of 2023	The accused Nos.1 to 4 in C.C.No.160 of 2016 on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai , have filed these Criminal Appeals before this Court challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 30 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 12 months Simple Imprisonment.
6	Crl.A.(MD).Nos.507 of 2023 and 94 of 2024	The appellants/A2 & A1 in C.C.No.30 of 2022 on the file of the Additional District and Sessions Court/Special Court for EC and NDPS Act Cases, Pudukkottai , dated 26.05.2023, have filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 22 kg of ganja and sentencing them to undergo 12 years Rigorous Imprisonment each and to pay a fine of Rs. 1,20,000/- (Rupees One Lakh and Twenty Thousand only) each in default, to undergo, 6 months Simple Imprisonment.



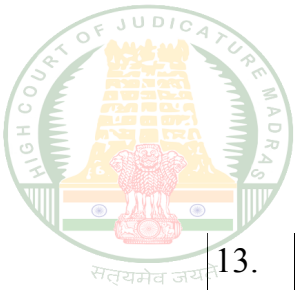
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7	Crl.A.(MD).No.534 of 2023	The appellant/Sole Accused in C.C.No.138 of 2020 on the file of I Additional Special Court for NDPS Act Cases, Madurai , has filed this appeal, challenging the conviction for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 22 kg of ganja and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 1 year Simple Imprisonment.
8	Crl.A.(MD).No.551 of 2023	The appellants/Accused No.1&2 in C.C.No.333 of 2016 on the file of District and Sessions Court for Communal Clash Cases, Madurai , have filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 22 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each.
9	Crl.A.(MD).No.588 of 2023	The appellants/A1 & A2 in Crl.A(MD)No.588 of 2023 are the accused in Special C.C.No.403 of 2022 on the file of the Principal Special Court for EC & NDPS Act Cases, Madurai , have filed this appeal challenging the conviction for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act for the alleged illegal possession of 21kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 6 months Simple Imprisonment.



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10	Crl.A.(MD).No.724 of 2023	The appellants/A1 & A2 in Spl.C.C.No.192 on the file of the II Additional Special Court for NDPS Act Cases, Madurai , dated 18.11.2022, have filed this appeal, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act for the alleged illegal possession of 21 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each.
11	Crl.A.(MD).Nos.773 & 953 of 2023 and 265 of 2024	The appellants/A2, A3, A1 & A4 in C.C.No.308 of 2020 on the file of the II Additional Special Court for NDPS Act Cases, Madurai , have filed these appeals, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act, for the alleged illegal possession of 23 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment.
12	Crl.A.(MD).No322 of 2023	The appellant in C.C.No.59 of 2016 on the file of the II Additional Special Court for NDPS Act Cases, Madurai have filed these appeals, challenging the conviction for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985, for the alleged illegal possession of 25 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment.



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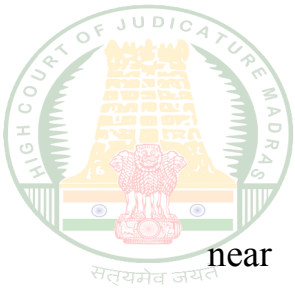
13.	Crl.A.(MD).No269 & 558 of 2023	The accused Nos.1 and 2 in C.C.No.228 of 2013 on the file of the learned Principal Special Court for NDPS Act Cases, Madurai have filed these appeals, challenging the conviction for the offence under sections 8(c) r/w 20(b)(ii)(C) and 25 and 29(1) of the NDPS Act, 1985 for the alleged illegal possession of 25 kg of ganja and sentencing them to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment.
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2. The brief facts, submission of the appellants and the learned

Additional Public Prosecutor in Crl.A.(MD).No.212 of 2020:

2.1.The brief facts of the case are as follows:

2.1.1.When P.W.2 was working as Sub-Inspector of Dindigul NIB CID office, on 30.03.2019, at 08.30 am, he received a secret information from his informant through phone about the appellant's illegal possession and transportation of 21 kg of ganja near Athoor Junction on the Sempatty to Ottanchatram Main Road. He recorded the said information in the General Diary at 08.45 a.m, and reduced it in writing under Ex.P.6 and informed the same to his Immediate Superior, namely, Inspector of Police. Thereafter, at about 09.30 a.m, P.W.1, P.W.2 and other police officers went to the spot with necessary equipment and keeping the surveillance. The appellant was carrying one gunny bag on his shoulder



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near the said Athoor Junction Road. The informant identified the appellant. P.W.1 and P.W.2 intercepted the appellant and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct search by the officer himself and hence, P.W.2 conducted search in the gunny bag, which was carried by the appellant in the presence of P.W.1 and other police officers. He found ganja in the said bag and weighed entire contraband and took the sample of S1, S2 from the said bag and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the appellant. The appellant also gave a confession and the same was reduced into writing by P.W.2 and he brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.42 of 2019 for the offence under Sections 8(C) r/w 20(b)(ii)(C) of NDPS Act and submitted a detailed report under Section 57 of NDPS Act. Following the same, P.W. 2 entrusted the custody of the accused to P.W.3 along with the contraband, sample and report under Section 57 of the Act. The Inspector of Police produced the accused before the learned Judicial Magistrate III, Dindigul, along with the recovered contraband and samples which were



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taken from the said contraband on 30.03.2019 itself at 08.30 p.m and made a request to remand him. After completing all the formalities, the learned Judicial Magistrate remanded the appellant to judicial custody on 30.03.2019. Thereafter, P.W.3 conducted the investigation and filed the final report before the II Additional Special Court for NDPS Act Cases, Madurai and the same was taken on file in C.C.No.365 of 2019.

2.1.2. The learned trial Judge issued summon to the accused and on his appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood for trial.

2.1.3. The prosecution, to prove the case examined P.W.1 to P.W.3, exhibited 12 documents as Ex.P.1 to Ex.P.12 and produced 3 material objects as M.O.1 to M.O.3. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness

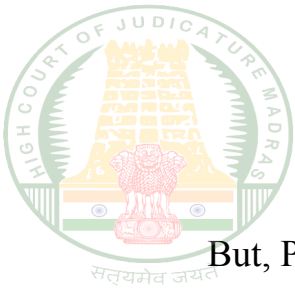


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and no document was marked. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) in default, to undergo, 1 year Rigorous Imprisonment for the offence under Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act. Challenging the same, present appeal has been filed.

2.2.The learned counsel for the appellant made the following submissions:-

2.2.1. The learned counsel for the appellant submitted that there was no strict compliance as required under Section 42 of NDPS Act. P.W. 3 admitted in the cross examination that during his investigation, the Inspector of Police, namely, Mrs.Selvi never disclosed about the receipt of the written information from P.W.2 through the phone and her permission to conduct search. Similarly, P.W.3 deposed that P.W.2 never gave the statement about his submission of the written information to the higher officer. He would further submit that according to Ex.P.6, the Inspector of Police is said to have received the information at 08.45 a.m.



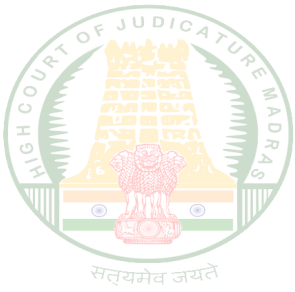
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But, P.W.2 deposed that she was not available at the Station on that day at the time of receipt of information. But, the document, Ex.P.6 contains the permission granted by her. Therefore, the document produced before the Court to prove the compliance of Section 42 of the Act is a concocted one. Therefore, he seeks for acquittal.

2.2.2. The learned counsel for the appellant would further submit that there was a delay of 4 days in producing the contraband before Forensic Science Laboratory, Madurai, and the same was not properly explained. Therefore, there was reasonable doubt over the seizure of contraband and taking of samples from the contraband from the recovered material. Therefore, he seeks for acquittal.

2.2.3. The learned counsel for the appellant would further submit that the place of recovery was busy area and no independent witness has been examined in order to believe the story of recovery of 21 kg of ganja from the appellant.

2.3.The learned Additional Public Prosecutor made the following submissions:-



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2.3.1. The learned Additional Public Prosecutor would submit that Ex.P.6 was marked to prove the compliance of Section 42(1) of the NDPS Act and the same was marked without any objection, the minor contradiction relating to the receipt of the information is not material when Ex.P.6 was submitted before the Court along with the accused at the time of remand itself on 30.03.2019. Due to the passage of time, this type of minor contradictions would normally occur.

2.3.2. The learned Additional Public Prosecutor would also submit that the sample was produced before Forensic Scientific Laboratory, Madurai, on 03.04.2019 itself and hence, there was no delay. Even otherwise, the delay in sending the sample to the Forensic Scientific Laboratory is not a ground to disbelieve the evidence of recovery.

2.3.4. He would further submit that the non-examination of the independent witness is not a ground to disbelieve the evidence of P.W.1 and P.W.2. In this regard, he also relied on the judgment of the Hon'ble Supreme Court in ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)*** reported in ***(2020) 10 SCC 120***. The said judgment reiterated the principle that the non-examination of the independent witnesses is not a circumstance to disbelieve the evidence regarding recovery, when the



other evidence are cogent and trust worthy. In this case, the learned trial Judge has considered the entire evidence to hold that the recovery from the appellant was proved in accordance with law.

3.The brief facts, submission of the appellants and the learned Additional Public Prosecutor in Crl.A.(MD).No.172 of 2023:

3.1.The brief facts of the case are as follows:

3.1.1. On 21.08.2019, at 9.30 a.m, when P.W.1 was working at Theni, as Sub-Inspector/2 NIB-CID, Theni Wing, he received a secret information from the informer about the appellant's illegal possession of ganja at Annanchivilakku By-Pass Road, Near Palam Martication School, Theni. Thereafter, P.W.1 reduced the same in writing under Ex.P. 1 and informed the same to his Immediate Superior, PW3 Inspector of Police, NIB-CID, Theni. Thereafter, at about 10.10 a.m, P.W.3 along with P.W.1 and other police officials went to the spot with necessary equipment. After arrival at the occurrence place, the informant identified the appellant, who carried the contraband in a gunny bag over his head and thereafter, P.W.1 and other police officials intercepted the appellant and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted



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officer as required under Section 50 of the NDPS Act. The appellant consented to conduct the search by the officer himself and hence, P.W.1 conducted search and found that he was in possession of 24 kg of Ganja in a gunny bag. Thereafter, P.W.1 recovered the contraband after following the procedure and took the samples of (each 50 grams) S1 and S2 and properly sealed the same. Thereafter, P.W.1 arrested the appellant. The appellant also gave a confession and the same was also recorded and he was brought to the police station and FIR was registered in Crime No. 101 of 2019 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. After that, P.W.1 handed over the custody of accused to P.W.3 along with the contraband with a detailed report under Section 57 of NDPS Act. P.W.3 took the accused along with contraband to learned Judicial Magistrate requesting for remand and after completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.3 conducted investigation and he entrusted the investigation with Deputy Superintendent of Police PW4 and PW4 continued the investigation and filed the final report before the I Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.429 of 2019.

3.1.2. The learned trial Judge issued summons to the accused and

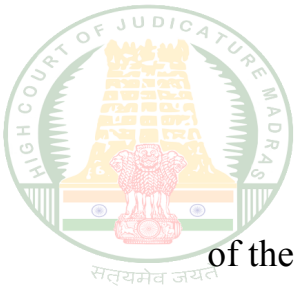


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on his appearance, served the copies under Section 207 Cr.P.C., and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

3.1.3. The prosecution, to prove the case examined P.W.1 to P.W.4 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and produced 3 material objects as M.O.1 to M.O.3. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness and no document was marked.

3.1.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) in default, to undergo, 6 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C)



of the NDPS Act. Challenging the same, present appeal has been filed.

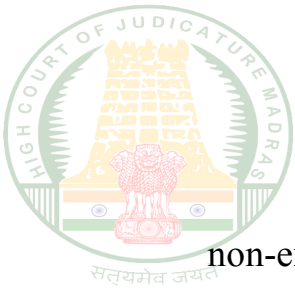
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3.2.The learned counsel for the appellant made the following submissions:-

3.2.1. The arrest intimation had contained crime number while the case of the prosecution was that FIR was registered at 12.15 hours. Before registration of FIR, how crime number could have been mentioned in the arrest intimation. Therefore, there was a serious doubt over the recovery and arrest of the accused.

3.2.2. According to PW1, he received the secret information, but PW3 deposed that the information was received by Karuppiah (PW2) and Rajesh and therefore, there is a material contradiction relating to the receipt of information and hence, there was a doubt over the compliance of Section 42 of the NDPS Act. According to P.W.2, three persons have conducted raid. But, only two persons were examined before the Court below and the non-examination of the other person, creates a doubt over the recovery.

3.2.3. The occurrence place was densely populated area and hence,



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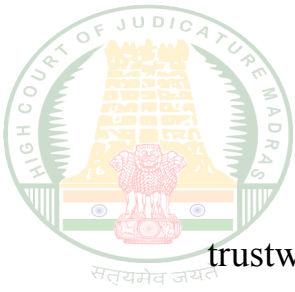
non-examination of the independent witnesses creates a doubt over the recovery of the contraband as alleged by prosecution in the occurrence place.

3.2.4. In Form-91, it is referred as “*to be produced along with property*”. Therefore, according to the learned counsel for the appellant, the contraband was not produced before the learned Judicial Magistrate on the date of remand. The contraband was produced before the Special Court only on 22.08.2019 with day delay of one day and hence, there was a doubt over the recovery of the contraband.

3.3.The learned Additional Public Prosecutor made the following submissions:-

3.3.1. After the arrest, as per “D.K.Basu's case guidelines”, the arrest intimation was sent to the family members. Therefore, after registration of case, crime number was mentioned in the intimation. Therefore, the case of the appellant that there was suspicion over the mentioning of crime number in the arrest intimation, is not legally sustainable.

3.3.2. When the evidence of P.W.1 and P.W.2 are cogent and

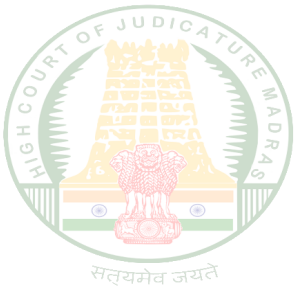


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trustworthy, the examination of independent witnesses is not necessary and the same is not a material in this case when all the recovery witnesses clearly deposed about the recovery without any infirmity.

3.3.3. P.W.2 received the information and he duly informed the same to P.W.3 and the same was acknowledged by P.W.3. To prove the same document under Ex.P.1 also was marked. In the said circumstances, the submission of the learned counsel for the appellant that there is no compliance under Section 42 of the Act, is not legally correct.

3.3.4. The contraband was produced before the Court and the same was received by the learned Judicial Magistrate. Thereafter, he also gave a direction that “*to be produced along with property on the next day before the Court*”. The interpretation made by the learned counsel for the appellant with regard to the word '*to be produced*' is not correct. It means that after producing the contraband before the learned Judicial Magistrate, the police had been directed to produce the same before the Special Court.

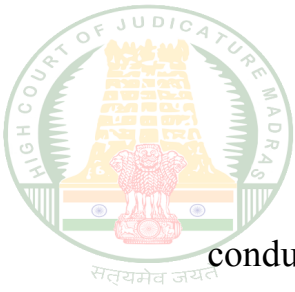


4. The brief facts, submission of the appellants and the learned

Additional Public Prosecutor in Crl.A.(MD).No.293 of 2021:

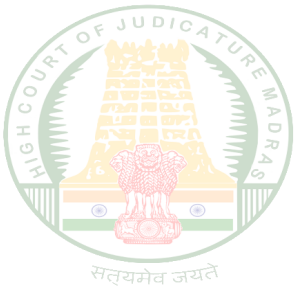
4.1.The brief facts of the case is as follows:

4.1.1. When P.W.1 was working as Sub-Inspector of Police, NIB CID, Theni, Theni District, on 05.06.2019, at 04.00 pm, he received a secret information from the informant, who appeared in person at the Police Station, about the appellant's illegal possession and transportation of 22 kg of ganja near Upparpatti on Theni – cumbam Road. He recorded the said information in the General Diary and reduced it in writing under Ex.P.1 and informed the same to his Immediate Superior, P.W.3, the Inspector of Police, NIB CID, Theni and got permission. Thereafter, at 04.20 pm, P.W.1, P.W.2 and another police officer went to the spot with necessary equipment along with the informant and were mounting surveillance. At about 05.30 p.m, the appellant was found carrying a white colour fertilizer sack on his head. The informant identified the appellant. P.W.1 and the other police officials intercepted the appellant and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct search by the officer himself and hence, P.W.1



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conducted search of the sack carried by the appellant, in the presence of P.W.2 and other police officers. He found possession of ganja in the said sack and weighed the entire contraband and took samples S1, S2 from the said sack and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the appellant. The appellant also gave a confession and the same was recorded by P.W.1. P.W.1 brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.85 of 2019 for the offence under Sections 8(C) r/w 20(b)(ii)(C) of NDPS Act and prepared a detailed report under Section 57 of NDPS Act. Following the same, P.W.1 entrusted the custody of the accused to P.W.3 along with the contraband, sample and report under Section 57 of the Act. The Inspector of Police produced the accused before the learned Judicial Magistrate, along with the recovered contraband and samples taken from the said contraband on 10.06.2019 and requested to remand him. After completing all the formalities, the learned Judicial Magistrate remanded the appellant to judicial custody and conducted the investigation. Thereafter, P.W.4 continued the investigation and filed the final report before the learned I Additional Special Judge for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.428 of 2019.

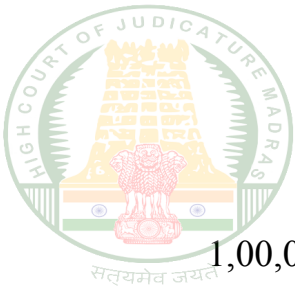


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4.1.2. The learned trial Judge issued summons to the accused and on his appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

4.1.3. The prosecution, to prove the case, examined P.W.1 to P.W.4, exhibited 12 documents as Ex.P.1 to Ex.P.12 and produced 3 material objects as M.O.1 to M.O.3. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of the prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness and no document was marked.

4.1.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.



1,00,000/- (Rupees One Lakh only) in default, to undergo, 6 months

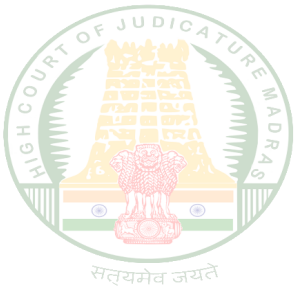
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Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, present appeal has been filed.

4.2.Submission of the learned counsel for the appellant :-

4.2.1. According to the prosecution, P.W.1 received a secret information and sent the same to his Immediate superior and thereafter, he proceeded to the spot and made a search and recovered the contraband. According to P.W.1, he received the secret information and made entry in the General Diary and the same was not produced and only Ex.P.1 was produced with delay. Therefore, there was doubt over the compliance of Section 42 of the Act. There were discrepancies between the testimony of P.W.1 and P.W.2 about the receipt of the information. Further, no material was produced to prove that the immediate superior acknowledged the said information. Therefore, there was non-compliance of the mandatory procedure stated in the Section 42 of the Act.

4.2.2. The recovered contraband was produced before the Court with delay and there was no explanation on the side of the prosecution and hence, recovery is doubtful.



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4.3. Submission of the learned Additional Public Prosecutor:-

4.3.1. The compliance of section 42 of the Act was clearly deposed by P.W.1 and P.W.3. The relevant document was also marked under Ex.P.

1. It contains the strict compliance as mandated under Section 42 of the Act. When the examination of the witness took place after number of years from the date of recovery, some minor discrepancies would always tend to occur in the prosecution evidence.

4.3.2. He would submit that the entire contraband and the sample were produced before the learned Judicial Magistrate at the time of the remand without any delay. The learned Judicial Magistrate verified and directed to produce the same before the Special Court. Therefore, the delay in producing the contraband before the Special Court is immaterial when the materials were properly sealed and the same is intact.

4.3.3. Therefore, according to the learned Additional Public Prosecutor, in all aspects, the prosecution clearly proved the case and hence, he prayed for dismissal of appeal by confirming the conviction



and sentence imposed by the learned trial Judge.

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5. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in in CrI.A.(MD).No.331 of 2023:

5.1.The brief facts of the case are as follows:

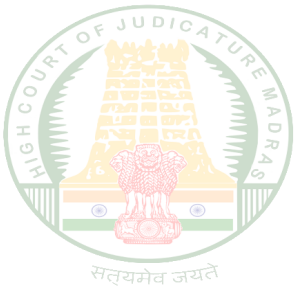
5.1.1. On 20.03.2021, at 06.00 a.m, when P.W.2 was working as Inspector police, Incharge Officer of Dindigul, NIB-CID, Dindigul, she received a secret information from the informant about the appellant's illegal possession of ganja at Rajathanikottai Bus Stop, Nilakkottai Taluk, Dindigul District. Thereafter, P.W.2 reduced the same in writing under Ex.P.4 and informed the same to her Immediate Superior namely, Deputy Superintendent of Police, NID-CID, Dindigul. Thereafter, at about 06.40 a.m, P.W.2 along with P.W.1 and other police officials went to the spot with necessary equipment. During the surveillance the informant identified the appellant and thereafter, P.W.2 and other police officials intercepted the appellant and introduced themselves as police officers. The appellant was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct the search by the officer himself and hence, P.W.2 conducted search and



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found that he was in possession of 22 kg of Ganja in a white colour plastic gunny bag. Thereafter, P.W.2 recovered the contraband after following the procedure and took the samples of (each 50 grams) S1 and S2 and properly sealed the same. Thereafter, P.W.2 arrested the appellant. The appellant also gave a confession and the same was also recorded. After that, P.W.2 handed over the accused along with contraband and the detailed report prepared under Section 57 of NDPS Act to P.W.3. P.W.3 sent the accused for remand along with contraband and FIR was registered in Crime No.14 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. After completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.3 conducted investigation and filed the final report before the I Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.337 of 2021.

5.1.2. The learned trial Judge issued summons to the accused and on his appearance, served the copies under Section 207 Cr.P.C., framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

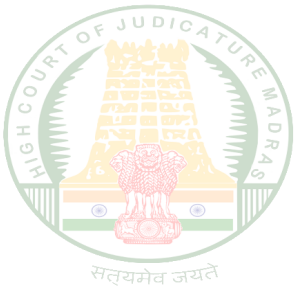


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5.1.3. The prosecution, to prove the case examined P.W.1 to P.W.3, exhibited 10 documents as Ex.P.1 to Ex.P10 and produced 3 material objects as M.O.1 to M.O.3. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness and one document was marked as Ex.D1.

5.1.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) in default, to undergo, 12 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, present appeal has been filed.

5.2. The learned counsel for the appellant made the following submissions:-



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5.2.1. According to the prosecution, P.W.2 received a secret information and sent the same to P.W.3, the Immediate superior and thereafter, she proceeded to the spot and made a search and recovered the contraband. The said evidence of P.W.2 is not corroborated by P.W.3 and the material documents and hence, there is total non-compliance of Section 42 of the Act.

5.2.2. The learned counsel for the appellant also submitted that there is non-compliance of Section 50 of the Act. According to him the contraband was recovered in two gunny bags and the total quantity of recovery is 22 kg and there was no weighing of the bags, leaves and seeds separately.

5.3. Submission of the learned Additional Public Prosecutor:-

P.W.1 received the secret information and he reduced it in writing and sent the information to P.W.3. P.W.3 also affirmed the said fact under Ex.P.4. It is clearly stated that he received the secret information. It shows the strict compliance under Section 42 of the Act. When the examination of the witness took place after a number of years from the date of recovery, some minor discrepancies would always tend to occur



in the prosecution evidence. Therefore, according to the learned

Additional Public Prosecutor, in all aspects, the prosecution clearly proved the case and hence, he prayed for dismissal of appeal by confirming the conviction and sentence imposed by the learned trial Judge.

6. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in CrI.A.(MD).Nos.396, 397, 399 and 400 of 2023:

6.1.The brief facts of the case are as follows:

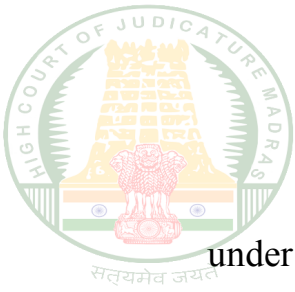
6.1.1.The appellants in CrI.A.(MD).Nos.397, 399 and 400 of 2023 are family members and the appellant in CrI.A.(MD).No.396 of 2023 is the relative of the above said appellants. They all purchased the contraband from Andra Pradesh to sell the same in Tamil Nadu. According to the prosecution, on 07.08.2015, at about 17.45 hours, P.W.2 received the secret information that all the appellants were in possession of 30 kgs of Ganja. After receipt of the said information, he recorded the same and reduced it in writing under Ex.P.4, in the General Diary and informed the same to his superior/P.W.3 and obtained permission and went to the occurrence place along with P.W.1, and other team members besides the informer. The informer identified all the appellants and went



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away and they enquired them and they disclosed their names and address. Thereafter, the police team rounded up the appellants and made a search on them under Ex.P1/Search Consent Letter. All the appellants were found in possession of two travel bags and one gunny bag with Ganja. The police team recovered the contraband of 30 Kgs of Ganja from the travel bags and one gunny bag DPS Act and properly sealed the contraband and the bag and the remaining contraband and they prepared Seizure Mahazar under Ex.P2. Thereafter, they arrested the accused under Ex.P3/Arrest Intimation Letter and took them to the Station and registered the case in Crime No.139 of 2015 under Sections 8(c) r/w 20(b)(ii)(C), 27A and 29(1) of NDPS Act, and produced the accused along with the contraband before the learned Judicial Magistrate. P.W.3 continued the investigation and he filed the final report after obtaining the chemical analysis report and examining number of witnesses. The learned trial Judge has taken the same on file in C.C.No.160 of 2016.

6.1.2. After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges



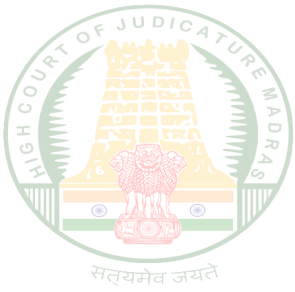
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under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985 and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood trial.

6.1.3.The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3, exhibited 14 documents as Ex.P.1 to Ex.P.14 and marked fourteen material objects as M.O.1 to M.O.14.

6.1.4.When the accused was examined under Section 313(1) (b) of Cr.P.C., by putting incriminating materials available against them, they denied the evidence as false. On the side of the accused, two witnesses were examined as D.W.1 and D.W.2 to prove that there was Outpost police station at the Arappalayam Police Station, but no one was examined from there.

6.1.5.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.160 of 2016 were guilty and passed the conviction and sentence as against the appellants as stated above.



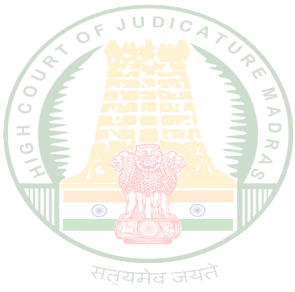
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**6.2.The learned counsel appearing for the appellants in in
Crl.A.(MD).Nos.6, 397, 399 and 400 of 2023 made the following
submissions:-**

6.2.1. In this case, because of the contradictory evidence of P.Ws. 1, 2 and 3, the compliance of Section 42 of the NDPS Act, is doubtful. According to the learned counsel, Section 42 was not complied with and hence, the conviction and sentence imposed against the appellants are liable to be set aside.

6.2.2. The learned counsel further contended that PW2 claims to have received the secret information and informed the same through cellphone, but the evidence on record shows that they informed in writing. According to P.W.2, they received the information and informed the same to the higher officer/P.W.3. But, there was no corresponding endorsement to prove the same.

6.2.3. There was inordinate delay in producing the contraband from the Magistrate to the Special Court and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.



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6.2.4. Even though the occurrence took place in the bus stand, no independent witness was examined. Apart from that, even when the outpost police station was there, no police officer was examined from there. Therefore, there is a doubt over the recovery of the contraband.

6.2.5. Except A1, all the accused are illiterate. In the Athatchi/Ex.P2, they obtained signature and thumb impression of the accused without reading over the contents of Athatchi to them. Even as per the allegation, A1 brought the huge quantity of Ganja from Andhra Pradesh and handed over to A2 to A4 and hence, there is no conscious possession on the part of A2 to A4. Hence, he seeks for acquittal.

6.3. The learned Additional Public Prosecutor appearing for the respondent Police made the following submissions:

6.3.1. Each accused had bags. In each bag, contraband was available.

6.3.2. All the appellants jointly came and they were found in



possession of contraband.

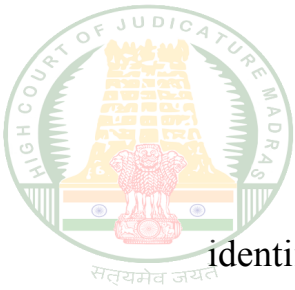
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6.3.3.P.W.1 and P.W.2 clearly deposed about the recovery. Hence, the conviction and sentence passed against the appellants under Section 8(c) r/c 20(b)(ii)(C) of NDPS Act is legally correct. Hence, he seeks to confirm the conviction and sentence imposed by the learned trial Judge.

7. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in CrI.A.(MD).Nos.507 of 2023 and 94 of 2024:

7.1.The brief facts of the case are as follows:

7.1.1. On 01.12.2021, at 09.00 a.m, when P.W.1 was working as Sub-Inspector of police, In-charge Officer, Ramanathapuram, he received a secret information from the informant through phone about the appellant's illegal transportation of ganja for sale in a car bearing Reg.No.TN-55-Q-1508 near Amma Poonga, Sethupathi Nagar. Thereafter, P.W.1 reduced the said information in writing under Ex.P.1 and informed the same to his Immediate Superior. Thereafter, at about 10.15 a.m, P.W.1 along with P.W.2 to P.W.4 went to the spot with necessary equipment. After arrival at the occurrence place, the informant



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identified the car and the appellants who came in a car from the North direction of Amma Poonga, and left the place. Thereafter, P.W.1 and other police officials intercepted the car. On seeing the Police party, the first appellant/A2 tried to escape from the car and during such attempt, he sustained injuries on his both thighs. However, P.W.1 and his team nabbed him and introduced themselves as police officers and they were informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct the search by the officer himself and hence, P.W.1 conducted search and found that they were in possession of 24 kg of Ganja in a gunny bag. Thereafter, P.W.1 recovered the contraband after following the procedure and took the samples S1 and S2 (each 50 grams) and properly sealed the same. Thereafter, P.W.1 arrested the appellants. The appellants also gave confession and the same was also recorded and he brought the accused to the police station and registered the FIR in Crime No.919 of 2021 for the offence under Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act. After that, P.W.1 handed over the custody of the accused with P.W.6 along with the contraband and submitted a detailed report under Section 57 of NDPS Act. P.W.6 produced the accused along with contraband before the

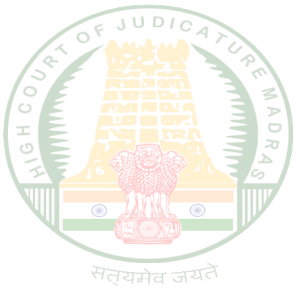


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Learned Judicial Magistrate and after completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.6 conducted investigation and filed the final report before the Additional District and Sessions Court/Special Court for EC and NDPS Act Cases, Pudukkottai, and the same was taken on file in C.C.No.30 of 2022.

7.1.2. The learned trial Judge issued summons to the accused and on his appearance, served the copies under Section 207 Cr.P.C., and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

7.1.3. The prosecution, to prove the case examined P.W.1 to P.W.6, exhibited 10 documents as Ex.P.1 to Ex.P.10 and produced 4 material objects as M.O.1 to M.O.4. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no one was examined as witness and no document was marked.

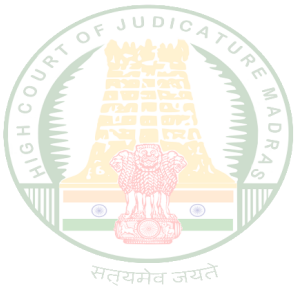


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7.1.4. The learned trial Judge after considering the oral and documentary evidence, acquitted the accused for the offence under Section 25 of the NDPS Act and convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced him to undergo 12 years Rigorous Imprisonment and to pay a fine of Rs. 1,20,000/- (Rupees One Lakh and Twenty Thousand only) in default, to undergo, 6 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the said conviction and sentence imposed against them, present appeal has been filed.

7.2.The learned counsel appearing for the appellants in all appeals made the following submissions:-

7.2.1. There was no compliance under Section 42 of the NDPS Act. According to them, P.W.1 who claims to have received a secret information has admitted that he has not made entry in the General Diary and also not recorded the said information. In the said circumstances, without recording the information, there was no strict compliance under Section 42 of the Act.



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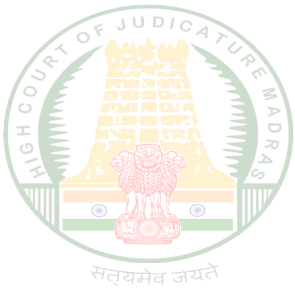
7.2.2. The learned counsels for the appellants also submitted that there is non-compliance of Section 50 of the Act. According to him, contraband was recovered in a gunny bag and the total quantity of recovery is 22 kg and there was no weighing of the bag, leaves and seeds separately.

7.2.3. There is a delay in producing the contraband before the Court and the same was not properly explained.

7.2.4. The presence of the crime number in the material objects before registration of the case creates doubt over the recovery at the spot.

7.2.5. There was no compliance under Section 52(A) of the Act. As per Section 52A of the NDPS Act, all narcotic drugs and psychotropic substances should have been disposed of. To prove the same, no document was produced before this Court and hence, he seeks acquittal.

7.2.6. A2 is a driver and he has no knowledge about the possession of ganja in the car and there is no material to connect him.



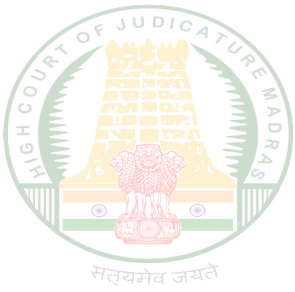
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7.2.7. He has sustained injuries and the same was not properly explained. Hence, his specific case that he was arrested much earlier to the occurrence is a probable.

7.2.8. The learned trial Judge, acquitted the appellants under Section 25 of the NDPS Act and there was no appeal filed on the side of the prosecution. Therefore, the case of the prosecution that the appellants conspired and carried the contraband, which comes under the commercial quantity, is not correct.

7.3.The learned Additional Public Prosecutor made the following submissions:-

7.3.1. The presence of crime number is immaterial and the judgment relied by the learned counsel for the appellant was subsequently clarified by this Court in subsequent judgments and no question was put-forth relating to that aspect. Hence, the submission is not legally valid.



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7.3.2. The recovery was made from the car of the appellant. In the said circumstance, Section 50 of the Act is not applicable even assuming that there was oral communication given to the each accused about the right under Section 50 of the Act which is permissible as per law laid down by the Hon'ble Supreme Court in the case of **Balwinder Singh (BINDA) vs. The Narcotic control Bureau** reported in **2023 INSC 852** and *State of H.P. v. Pawan Kumar reported in (2005) 4 SCC 350*. Therefore, there is no violation of Section 50 of the Act.

7.3.3. He further submitted that in this case, the entire contraband seized was separately packed and was in the proper custody of the police. The same were produced before the Court at the time of trial and also marked as MO.1 to MO.3 and the same was identified by P.W.1 and P.W. 2 to P.W.4. The same was also deposed by P.W.1 and P.W.2 to P.W.4 also. When P.W.1 and P.W.2 to P.W.4 deposed about the remaining contraband and identified the same before the Court, requirement of compliance under *Section 52A of the NDPS Act* does not arise in this case.

7.3.4. A2 has sustained injuries and the same was clearly explained



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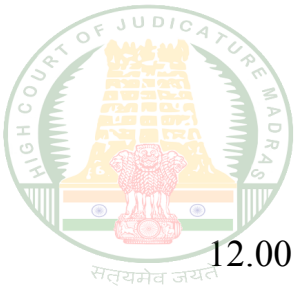
in the report and also through the evidence of P.W.1. When he made an attempt to escape from the scene of occurrence, he fell down and sustained injuries and there was no contrary evidence adduced on the side of the accused. The accused/A2 was the driver and he drove the vehicle with contraband. Therefore, his claim of innocence has to be rejected. Hence, he prayed to confirm the conviction and sentence imposed by the learned trial Judge by dismissing the appeal.

8. The brief facts, submission of the appellants and the learned

Additional Public Prosecutor in CrI.A.(MD).No.534 of 2022:

8.1.The brief facts of the case are as follows:

8.1.1. On 29.02.2020, at 10.00 a.m, P.W.2 received the secret information about the possession and transit of Ganja by the appellant in Old Railway Station road Theni. P.W.2 recorded the information in the General Diary and reduced the same in writing under Ex.P.5 and submitted the same to his Superior Officer. P.W.3, the Inspector of Police acknowledged the same and directed to conduct search and report. Hence, P.W.2 along with his team members went to the place of occurrence at about 11.00 a.m and mounted surveillance. The informant identified the person, who went to the said place of occurrence at about



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12.00 p.m, carrying two travel bags on his head. P.W.2 and his team intercepted the appellant and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct the search by the officer himself and hence, P.W.2 conducted search and found a Black and Brown Colour Travel Bags. They opened the two bags and found that there was 22 kg of Ganja. Thereafter, they recovered the contraband after following the procedure and took the samples S1 and S2 (each 25 grams) and properly sealed the same. Thereafter, he arrested the appellants.

8.1.2. The appellant also gave confession and the same was recorded. After that, P.W.2 handed over the accused along with contraband and a detailed report under Section 57 of NDPS Act, to P.W.3. P.W.3 produced the accused along with contraband after FIR was registered in Crime No.22 of 2020 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act before the jurisdictional magistrate. After completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.3 conducted the investigation and P.W.4 continued the investigation and filed the final report before the I

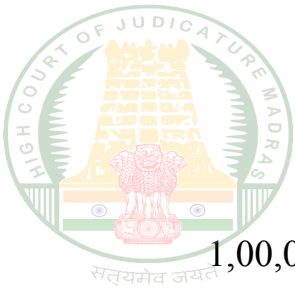


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Additional District Court for NDPS Act Cases at Madurai, and the same was taken on file in C.C.No.138 of 2020. The learned trial Judge issued summons to the accused and on his appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned him. The accused pleaded not guilty and stood trial.

8.1.3. The prosecution, to prove the case examined P.W.1 to P.W.4, exhibited 14 documents as Ex.P.1 to Ex.P.14 and produced 8 material objects as M.O.1 to M.O.8. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the defence, no witness was examined and no document was marked.

8.1.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.



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1,00,000/- (Rupees One Lakh only) in default, to undergo, 1 year Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

8.1.5. The learned trial Judge, on considering the oral and documentary evidence, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant has preferred this appeal.

8.2 The learned counsel for the appellant submitted the following submissions:-

8.2.1. According to the prosecution, P.W.2 received the secret information and he made an entry in the General Diary and thereafter, he reduced the same in writing and obtained permission from P.W.3 through phone to conduct search and recovery of contraband from the appellant. General Diary is a material document and the same was not produced. Even P.W.2 & P.W.3 never deposed about the compliance of section 42 of the Act. More particularly, P.W.3 never deposed about the receipt of the information furnished by P.W.2 and his endorsement was made in Ex.P.5, intimation to raid and search. Hence, the prosecution never proved the



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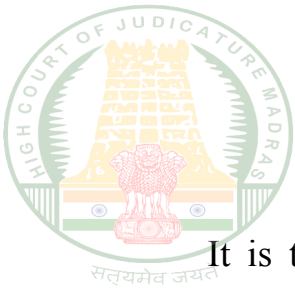
requirements of Section 42 of the NDPS Act. Hence, without any substantive evidence before the Court, there was no compliance of Section 42 except mere marking of Ex.P.5.

8.2.2. The learned counsel further submitted that the sample is packed with a slip containing crime number. Therefore, the recovery of the sample at the spot is suspicious.

8.3 Submission of the learned Additional Public Prosecutor:

8.3.1. The prosecution proved the compliance of Section 42 of the NDPS Act, as per the guidelines issued by the Hon'ble Constitution Bench of the Supreme Court in the case of *Karnail Singh vs. State of Haryana* reported in **2009 8 SCC 539** through the evidence of P.W.2 and P.W.3 and Ex.P5.

8.3.2 The presence of the Crime number in the sample slip is not a circumstance to disbelieve the evidence of the recovery witness. At the time of the production of the samples before the Court, in order to identify the samples of particular criminal case, the slip would be affixed on the sample with crime number. As per the Criminal Rules of Practice,



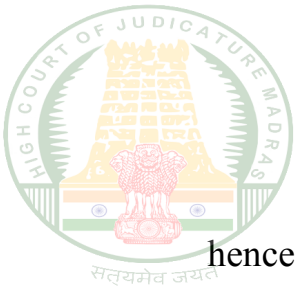
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It is the duty of the investigating officer to affix the particular crime number to the samples to make safe custody to avoid mixing up with the other case properties. It is not the evidence that the crime number was affixed in the occurrence place itself at the time of taking the sample. Therefore, he seeks to dismiss the appeal.

9. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in CrI.A.(MD).No.551 of 2023:

9.1.The brief facts of the case are as follows:

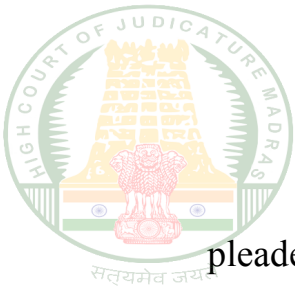
9.1.1. P.W.1 received a secret information from the informant on 07.05.2016, at 10.00 am. Thereafter, P.W.1 reduced the same into writing under Ex.P.1 and informed the same to his Immediate Superior/P.W.3. Thereafter, at about 10.40 a.m, P.W.1 along with P.W.2 went with necessary equipment to place called Paramathevar Garden situated at Usilampatti – Elumalai Road. In the said circumstances, the informant identified the appellants and thereafter, P.W.1 and P.W.2 intercepted the appellants and introduced themselves as police officers and they were informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct the search by the officer himself and



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hence, P.W.1 conducted search and found 100 plastic bags, two gunny bags and two cell phones. They recovered the same and opened the gunny bags and found that there was 22 kg of Ganja. Thereafter, they recovered the contraband after following the procedure and took the samples S1 and S2 (each 50 grams) and properly sealed the same. Thereafter, he arrested the appellants. The appellants also gave confession and the same was recorded. After that, P.W.2 handed over the accused along with contraband and a detailed report under Section 57 of NDPS Act, to P.W.3. P.W.3 produced the accused along with contraband after FIR was registered in Crime No.81 of 2016 for the offence under Section 8(c) r/w 20(b)(ii)(C), 27(A) and 29(1) of NDPS Act before the jurisdictional magistrate. After completing all the formalities, the learned Judicial Magistrate remanded the appellants. Thereafter, P.W.3 conducted the investigation and filed the final report before the District and Sessions Court for Communal Clash Cases, Madurai, and the same was taken on file in C.C.No.333 of 2016.

9.1.2. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused



pleaded not guilty and stood trial.

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9.1.3. The prosecution, to prove the case examined P.W.1 to P.W.3 exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 6 material objects as M.O.1 to M.O.6. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the defence, no oral or documentary evidence was let in. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(c) of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, present appeal has been filed.

9.2. Submission of the learned counsel for the appellant :-

9.2.1. Mr.S.Kanagaraj, the learned counsel for Mr.R.Alagumani



and Ms.G.Prabhahari, the learned Legal Aid Counsel appearing for the appellants jointly made the following submissions:-

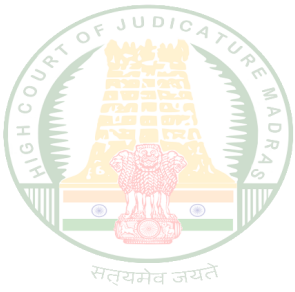
9.2.2. According to the prosecution, P.W.1 received a secret information and proceeded further and made a search and recovery of the contraband. In the said circumstances, there was no strict compliance of Section 42 of NDPS Act.

9.2.3. There was contradictions relating to the place of the occurrence between the evidence of witnesses.

9.2.4. The contraband was belatedly produced before the Court without any explanation.

9.2.5. According to the prosecution, they recovered two gunny bags mixed. But, they produced only one bag before the Court and there was no explanation in this aspect.

9.2.6. There was no examination of the independent witnesses.



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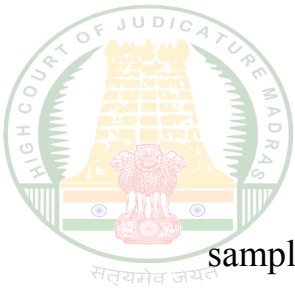
9.2.7. As per the prosecution, 50 grams of sample was taken on the spot. But, in the Chemical Analysis Report, it was mentioned as '43 grams' and hence, it creates doubt over the samples produced before the Court and the sample taken in the place of occurrence.

9.2.8. Apart from that, the appellants are ladies and also aged about more than 63 years. Therefore, they prayed for the reduction of sentence by converting the conviction from the Section 8(c) r/w 20(2)(ii)(c) of the NDPS Act, to 8(c) r/w 20(2)(ii)(b) of the NDPS.

9.3. Submission of the learned Additional Public Prosecutor:-

9.3.1. The learned Additional Public Prosecutor submitted that the compliance of section 42 of the Act was clearly deposed by P.W.1 and P.W.3. The relevant document was also marked under Ex.P.1. It proves the strict compliance under Section 42 of the Act. When the examination of the witness took place after a number of years from the date of recovery, some minor discrepancies would naturally occur.

9.3.2. He further submitted that the difference in the weight of



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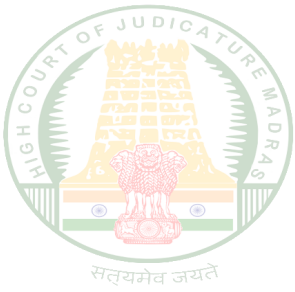
sample is immaterial when the seal of sample was intact and also the contraband was recovered on 04.05.2016 and it was entrusted in the lab on 08.05.2016. Therefore, due to the passage of time, the weight might have reduced.

9.3.3. He further submitted that in the Lab, the measurement was taken by using a sophisticated Machine or an Advanced Machine. But, in the spot, they took the measurement in the ordinary scale. Therefore, there may be subtle difference and hence, it is immaterial.

9.3.4. He further submitted that the learned trial Judge, correctly relied the judgment of the Hon'ble Supreme Court in the case of *Slyammal Ghosh Vs, State of West Bengal* reported in *2012 7 SCC 646*. Therefore, in all aspects, the prosecution clearly proved the case and hence, he prayed for dismissal of appeal by confirming the conviction and sentence imposed by the learned trial Judge.

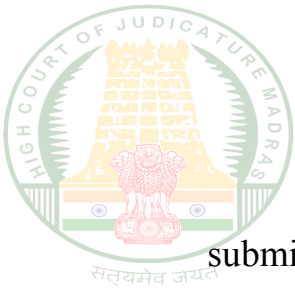
10. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in Crl.A.(MD).Nos.588 of 2023:

10.1.The brief facts of the case are as follows:-



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10.1.1. P.W.2 received the secret information on 08.12.2021, about the illegal possession of huge quantity of Ganja under a bush situated at Pandikovil, Vallinagar, Allinagaram, Theni District. He reduced it in writing and informed the same to the superior/P.W.3. P.W.3 received the information and granted permission to conduct search. Hence, P.W.1, P.W.2 and other police officers reached the occurrence place and the informant identified three persons. Thereafter, P.W.1, P.W.2 and other police officers attempted to nab the accused. However, one of the accused (A1)/respondent in CrI.A(MD)No.939 of 2024 fled away from the scene of occurrence and the remaining accused/appellants in CrI.A(MD)No.588 of 2023 were caught by the police officers. P.W.2 introduced themselves as police officers and the accused were informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The accused consented to conduct the search by the officer and hence, P.W.2 conducted search and found 21 kg of ganja in a gunny bag. Thereafter, they recovered the contraband after following the procedure and took samples from the gunny bag and properly sealed the same. Thereafter, the arrested accused also gave a confession and the same was recorded. After that, P.W.2 handed over the accused along with contraband and



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submitted a detailed report under Section 57 of NDPS Act, to P.W.3. P.W.

3 produced the nabbed accused along with contraband, after FIR was registered in Crime No.621 of 2021 for the offences under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act before the jurisdictional magistrate. After completing all the formalities, the learned Judicial Magistrate remanded the appellants. Thereafter, P.W.3 conducted investigation and P.W.4 continued the investigation and filed final report before the Principal Special Court for EC & NDPS Act cases, Madurai, and the same was taken on file in C.C.No.403 of 2022.

10.1.2. Since A1 in C.C.No.403 of 2022 was absconding, the trial was commenced as against the remaining accused/appellants in CrI.A(MD)No.588 of 2023.

10.1.3. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. Both the accused pleaded not guilty and stood trial.

10.1.4. The prosecution, to prove the case examined P.W.1 to P.W.4



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and exhibited 14 documents as Ex.P.1 to Ex.P14 and marked 2 material objects as M.O.1 to M.O.2. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the appellants, no witness was examined and no document was marked.

10.1.5. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 6 months Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of the NDPS Act.

10.1.6. Challenging the above said conviction and sentence passed by the learned trial Judge, the appellants filed the said CrI.A(MD)No.588



of 2023.

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10.2.Submission of the learned counsel for the appellant in

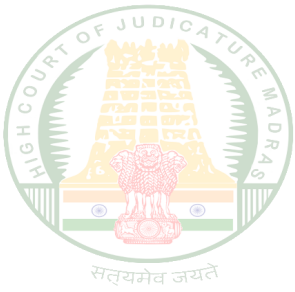
Crl.A.(MD).No.588 of 2023:

10.2.1. There was total non-compliance of Section 42 of the NDPS Act. Ex.P8 produced only at the time of the chief examination of P.W.2 and the same has been marked with objection for the reason that the same reached the Court belatedly.

10.2.2. There was a delay in producing the contraband before the Special Court and hence, there was chance of manipulation and hence, the learned counsel seeks acquittal.

10.2.3. The presence of the crime number in the arrest memo and recovery mahazar before the registration of the case would create a doubt over the recovery in the occurrence place.

10.2.4. The contraband and samples were produced before the Special Court with considerable delay and hence, serious doubt arises in taking of sample at the occurrence place.



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10.2.5. The recovered contraband, namely, Ganja did not contain flowering or fruiting tops and hence, conviction under Section 20(b)(ii) (c) of the NDPS Act is not legally maintainable and hence, he seeks acquittal.

10.3.Submission of the learned Additional Public Prosecutor in

CrI.A.(MD).No.588 of 2023:

10.3.1.P.W.2 received the information and recorded in general diary and reduced the same in writing and submitted to P.W.3. The same is clear from Ex.P.8. Therefore, there is no question of non-compliance.

10.3.2. Presence of the crime number is not material when there was no question raised by the defence counsel about the presence of the crime number either in the occurrence place or at the time of producing the same before the learned trial Judge at the time of remand, during cross examination. Only to identify the property the crime number is mentioned after seizure. The contraband was produced with seal intact and hence, there is no question of tampering. The chemical analysis report clearly stated that the presence of cannabinoid and hence, there is



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no question of absence of flowering or fruiting tops. Therefore, he seeks to confirm the conviction.

11. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in Crl.A.(MD).No724 of 2023:

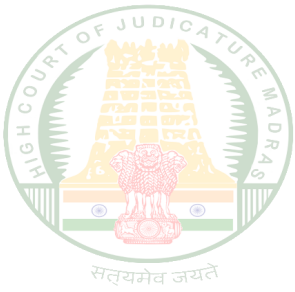
11.1.The brief facts of the case are as follows:

11.1.1. On 17.11.2016, at 12.30 p.m, when P.W.2 was working as Sub-Inspector of Police, Cumbum North P.S.at Theni, NIB-CID, Theni Wing, he received a secret information from the informer about the appellant's illegal possession of ganja Near Naga Kalamman Temple, Kombai Road, Theni. Thereafter, P.W.2 reduced the same in writing under Ex.P.6 and informed the same to his Immediate Superior P.W.4 Inspector of Police, NIB-CID, Theni. Thereafter, at about 01.00 p.m, P.W.2 along with other police officials went to the spot with necessary equipment and mounted surveillance. At that time, they found an Auto bearing Reg.No.TN-60-S-6026, which was coming from North to South direction and the informant identified the appellant and left from the place. Thereafter, P.W.2 and other police officials intercepted the Auto and found two persons in that Auto. P.W.2 and other police officials introduced themselves as police officers and they were informed about



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their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct the search by the officer himself and hence, P.W.2 conducted search and found 21 kg of Ganja in a white coloured bag in the backside seat of the Auto. Thereafter, P.W.2 recovered the contraband after following the procedure and took the samples S1 and S2 (each 50 grams) and properly sealed the same. Thereafter, P.W.2 arrested the appellants. The appellants also gave a confession and the same was also recorded. The accused were brought to the police station and registered an FIR in Crime No.636 of 2016 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. After that, P.W.2 handed over the accused along with contraband and a detailed report under Section 57 of NDPS Act to PW3. P.W.3 produced the accused along with contraband before the Learned Judicial Magistrate and after completing all the formalities, the learned Judicial Magistrate remanded the appellant. Thereafter, P.W.3 conducted investigation and he entrusted the investigation with PW4 and PW4 continued the investigation and filed the final report before the II Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.192 of 2017.

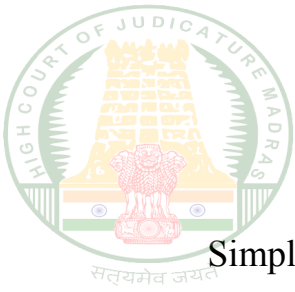


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11.1.2. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C., and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

11.1.3. The prosecution, to prove the case examined P.W.1 to P.W. 5, exhibited 13 documents as Ex.P.1 to Ex.P.13 and marked 4 material objects as M.O.1 to M.O.4. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the defence, no oral or documentary evidence was let in.

11.1.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year



Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, present appeal has been filed.

11.2. The learned counsel for the appellants made the following submissions:-

11.2.1. According to the prosecution, one Mr.Bharathan recorded the information but he was not examined and in Ex.P.6 and Ex.P.7, there is no mentioning of name of the accused. Therefore, there is no compliance of Section 42 of the Act

11.2.2. There was no explanation for the mentioning of different crime number in the material object namely, MO.4 and the same creates doubt.

11.2.3.P.W.5, Investigating Officer stated in the final report that 18 white coloured gunny bags of ganja were recovered. Therefore, there is suspicion over the recovery. In the said circumstances, the prosecution miserably failed to prove the case beyond reasonable doubt. Hence, he



seeks acquittal.

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11.3. The learned Additional Public Prosecutor made the following submissions:-

11.3.1. The learned Additional Public Prosecutor on instructions and upon perusal of the records would submit that it is the specific case of P.W.2 that he received a secret information on 17.11.2016, at 12.30 p.m, and made an entry in the General Diary. Further, he sent the said information to his Immediate Superior namely, P.W.4 and the same was marked as Ex.P.6 and he also acknowledged the same and that was also marked as Ex.P.7. Hence, compliance under Section 42 of the Act was clearly proved.

11.3.2. The conviction under Section 8(C) r/w 20(2)(ii)(C) of the NDPS is maintainable when the evidence of P.W.2 and P.W.1 are cogent and trustworthy in respect of the recovery of the contraband in the Auto, in which the convicted appellants were the occupants. He also submitted that there is no bar to convict the appellants under Section 8(C) r/w 20(2)(ii)(C) of the NDPS Act, and the same is an independent provision. Hence, he prayed to dismiss the appeal by confirming the conviction and



sentence imposed by the learned trial Judge.

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12. The brief facts, submission of the appellants and the learned Additional Public Prosecutor in Crl.A.(MD).Nos.773 & 953 of 2023 and 265 of 2024:

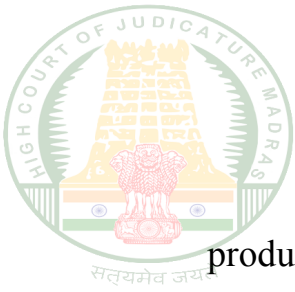
12.1.The brief facts of the case are as follows:

12.1.1.When P.W.1 was working as Sub-Inspector of Police, NIB CID, Theni, on 16.06.2020, at 06.00 am, he received a secret information from his informant in person about the appellants' illegal possession and transportation of 23 kg of ganja near new By-Pass Road Junction, Kattupallivasal Road, Cumbum, Theni District. He recorded the said information in the General Diary and reduced it in writing under Ex.P.1 and informed the same to his Immediate Superior, namely, Inspector of Police Cumbum Police Station (North), Theni, Theni District, and got permission. Thereafter, at 06.30 am, P.W.1 & P.W.2 and other police officers went to the spot with necessary instruments along with the informant and mounted surveillance. At about 07.00 a.m, they intercepted a TATA Indica car bearing Reg.No.TN-60-E-2841 and a bike bearing Reg.No.TN-60-V-0419 , which were proceeding from North to South and the informant identified the appellants. P.W.1 and P.W.2 found that four



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persons were present in the car including a woman and two persons in the two wheeler. When P.W.1 and P.W.2 tried to nab them, one person fled away from the scene of occurrence. However, they caught of the remaining accused and introduced themselves as police officers and they were informed about their right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellants consented to conduct search by the officer and hence, P.W.1 conducted search in the car in the presence of P.W.2 and other police officers. He found ganja in two white coloured fertiliser sacks in the dicky of the car and took the weight of entire contraband and drew the samples S1 and S2 from the said bag and properly sealed the same. He also properly sealed the remaining contraband. Thereafter, he arrested the appellants. The appellants also gave confessions and the same were recorded by P.W.1 and he brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.42 of 2020 for the offence under Sections 8(C) r/w 20(b)(ii) (C), 25 and 29(1) of NDPS Act, and 269 of IPC and prepared a detailed report under Section 57 of NDPS Act. Following the same, P.W.1 entrusted the custody of the accused to P.W.3 along with the contraband, sample and report under Section 57 of the Act. The Inspector of Police



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produced the accused before the learned Judicial Magistrate, along with the recovered contraband and samples taken from the said contraband on 20.07.2020 and requested to remand them. After completing all the formalities, the learned Judicial Magistrate remanded the appellants in judicial custody. Thereafter, P.W.3 conducted investigation and P.W.3 continued the investigation and the case has been transferred to NIB-CID Police, and P.W.6, P.W.7 conducted investigation and P.W.7 filed the final report before the II Additional Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.308 of 2020.

12.1.2. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood trial.

12.1.3. The prosecution, to prove the case examined P.W.1 to P.W.7, exhibited 24 documents as Ex.P.1 to Ex.P.24 and marked 4 material objects as M.O.1 to M.O.4. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution



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witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellants. On the side of the defence, no oral or documentary evidence was let in.

12.1.4. The learned trial Judge after considering the oral and documentary evidence, acquitted the appellants from the charges under Sections 25 & 29 of the NDPS Act and Section 269 of IPC and convicted them for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act, and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Challenging the same, present appeal has been filed.

12.2. The learned counsel for the appellants made the following submissions:-

12.2.1. According to the prosecution, P.W.1 received a secret information and proceeded further and made a search and recovery of the contraband. But, P.W.5 admitted that he has not received any written



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communication and therefore, there was no strict compliance of Section 42 of NDPS Act.

12.2.2. There was contradictions relating to the place of the occurrence between the evidence of witnesses.

12.2.3. The contraband was belatedly produced before the Court without any explanation.

12.2.4. According to the prosecution, the contraband was recovered from two gunny bags containing 12 kg in one bag and 11 kg in another bag, and were mixed together each other. But, they produced only one bag before the Court and there is no explanation for non-production of another bag.

12.2.5. There was no examination of the independent witnesses.

12.2.6. P.W.4 admitted that a detailed report under Section 57 of the Act is not submitted to him and Ex.P.24 was not filed along with the final report. Therefore, there was suspicion over the compliance of



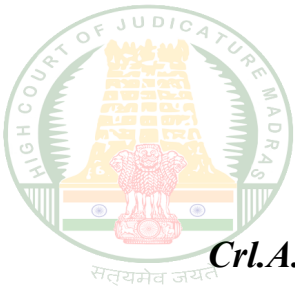
Section 57 of the Act.

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12.2.7. According to the evidence of P.W.2, P.W.5 and P.W.6, the occurrence took place during the covid period and hence, number of check posts were in place and therefore, there was no possibility of recovery of contraband from the car.

12.2.8. The learned trial Judge has acquitted the accused under Sections 25 and 29(1) of the NDPS Act and whileso, conviction under Section 8(C) r/w 20(b)(ii)(C) of the NDPS Act, is not legally maintainable. Further, the learned trial Judge has committed error in convicting A1 to A4 under Section 8(C) r/w 20(b)(ii)(C) of the NDPS Act, after acquitting A5 to A7.

12.2.9. Considering the age of the appellant in CrI.A(MD)No.953 of 2023 and being a lady there is no evidence to prove her conscious possession and the learned counsel seeks to reduce the sentence by altering the conviction under Section 8(C) r/w 20(2)(ii)(B) of the NDPS. They relied on **2001 (1) MWN (CrI) 41, 2020 9 SCC 202, 2017 15 SCC 684** and un-reported judgment of this Court, in **CrI.A.No.90 of 2012 and**



Crl.A.No.70 of 2016.

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12.3. The submission of the learned Additional Public

Prosecutor:-

12.3.1. P.W.1, P.W.2 and P.W.4 clearly deposed about the compliance of Section 42 of the Act and also Ex.P.1 and Ex.P.2 were marked to prove the compliance. Therefore, the contention of the learned counsel for the appellants is liable to be rejected.

12.3.2. The conviction under Section 8(C) r/w 20(2)(ii)(C) of the NDPS is maintainable even after the acquittal under Section 25, 29(1) of the NDPS Act when the evidence of P.W.1 and P.W.2 are cogent and trustworthy in respect of the recovery of the contraband in the car, in which convicted appellants were the occupants. He also submitted that there is no bar to convict the appellants under Section 8(C) r/w 20(2)(ii)(C) of the NDPS Act, as the same is substantive provision.

12.3.3. The non-production of one of the bag is not a material lapse on the part of the prosecution when the entire contraband was produced before the learned Judicial Magistrate at the time of the remand



and before the trial Court.

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12.3.4. The compliance of section 57 of the Act was proved through the document under Ex.P.24 and therefore, submission of non-compliance of Section 57 of the Act, is not correct. Even otherwise as per the judgment of the Hon'ble Supreme Court reported in **2001 (3) SCC 28**, compliance of provision under Section 57 of the Act, is directory and the same would not vitiate the prosecution case when the recovered contraband and FIR were sent to the Immediate Superior immediately.

12.3.5. The non-examination of the independent witness is immaterial when P.W.1 and P.W.2's evidence are cogent and trustworthy.

12.3.6. The contraband was produced before the learned Judicial Magistrate on the date of the remand. Subsequently, due to the corona lockdown, the contraband was kept in the custody of the police and produced after the lifting of the corona lockdown and hence, there is no intentional delay. A1 to A4 are the occupants of the car and they were found in possession of 23 kg of ganja in 2 bags and hence, the



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prosecution proved the conscious possession. Therefore, their conviction under Section 8(C) r/w 20(b)(ii)(C) of the Act, is legally maintainable. In all aspects, the prosecution clearly proved the case and hence, he prayed for dismissal of appeal by confirming the conviction and sentence imposed by the learned trial Judge.

13.The brief facts, submission of the appellants and the learned Additional Public Prosecutor in CrI.A.(MD).No.322 of 2023:

13.1.The brief facts of the case are as follows:

13.1.1 According to the prosecution, on 08.09.2015 at about 08.30 am., P.W.2 received secret information regarding the smuggling of Ganja. He recorded the said information under Ex.P1, and informed the same to his superior officer, obtained permission and went to the occurrence place along with his team and the informer. The informer identified the accused who was coming along with the white colour plastic gunny bag. Thereafter, P.W.2 caught the appellant and made a search on him under Ex.P1/Search Consent Letter and recovered the contraband of 25 Kgs of Ganja in the white colour plastic Gunny Bag and took the sample following the procedure stated under the NDPS Act. Thereafter, he arrested the accused and brought him to the Station and registered the

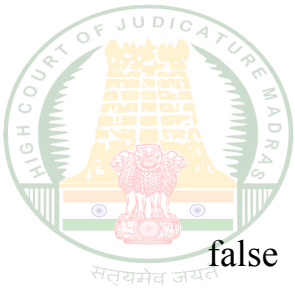


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case and produced the accused for remand along with the contraband before the learned Judicial Magistrate and the investigation was continued by the investigating officer and he filed the final report after obtaining the chemical analysis report and examining number of witnesses. The learned trial Judge has taken the same on file in C.C.No. 59 of 2016.

13.1.2. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellant, framed charges under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act 1985 and the same was read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood trial.

13.1.3. The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3, exhibited 10 documents as Ex.P.1 to Ex.P.10 and marked three material objects as M.O.1 to M.O.3. When the accused was examined under Section 313(1) (b) of Cr.P.C., by putting incriminating materials available against him, he denied the evidence as



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false and further stated that a false case was foisted against him. The accused neither produced any documents nor examined any witness on his side.

13.1.4. The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.59 of 2016 was guilty under section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985 and passed the conviction and sentence against the appellant as stated above. Challenging the same the present appeal came to be filed.

13.2. The learned counsel for the appellant made the following submissions:

13.2.1. The learned counsel for the appellant has filed a detailed written argument and would submit that there was no strict compliance of Section 42 of the NDPS Act, 1985. According to the learned counsel for the appellant, there was discrepancy relating to the receipt of the information between the evidence of P.W.2 and P.W.3.

13.2.2. He would further submit that there are discrepancies relating to the receipt of the information from the informant between the



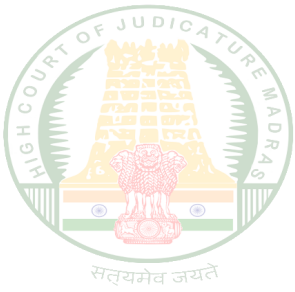
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evidence of P.W.2 and the contents of Ex.P4. P.W.2 recorded the information in the General Diary and he had not recorded the information in a separate paper and he has not produced the CD (Case Diary) file either before the Court or sent it to the superior officer.

13.2.3.The secret information did not contain the time of the illegal transportation of the contraband by the appellant. In view of the above circumstances, there was no strict compliance of section 42 of the NDPS Act.

13.2.4.As per the evidence of P.W.3, P.W.2 has not made the statement about the compliance of Section 52A of the NDPS Act, 1985. There are material discrepancies relating to Ex.P2/Seizure Mahazar and Ex.P7/Form 91 relating to the enclosure cover of the material object. Therefore, there is a suspicion relating to drawing of samples at the place of occurrence.

13.2.5.Even though, in the occurrence place number of private individuals were available, non examination of the private individual vitiates the recovery.

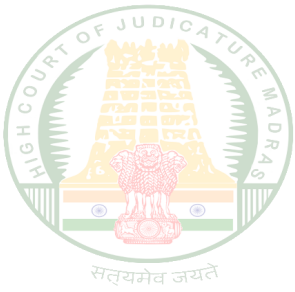


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13.2.6. There was total non compliance of Section 52(A) of the NDPS Act, 1985 and as per the judgment of the Hon'ble Supreme Court in the case of *Simarnjit Singh v. State of Punjab* reported in (2024) 14 SCC 222 and *Mohd. Khalid v. State of Telangana* reported in (2024) 5 SCC 393 and the judgment of this Court in the case of *Mareeswaran vs. The Inspector of Police* reported in 2023 (2) L.W. Crl. 893 and hence the appellant is entitled for acquittal.

13.2.7. There was no compliance of Section 55 of the NDPS Act, 1985. There was a delay of 48 days in sending the sample to the FSL. In Ex.P2, S1 and S2, namely, the samples weight was mentioned as 25 grams each and in the FSL report/Ex.P10 the weight of the sample was stated as 23 grams and 20 grams. Therefore, there is a doubt over the recovered samples sent to the FSL office and hence, he seeks benefit of doubt to be given to the accused.

13.2.8. Further, he would submit that all the mahazar witnesses, namely, police officers were not examined and hence, adverse inference ought to have been drawn against the prosecution.

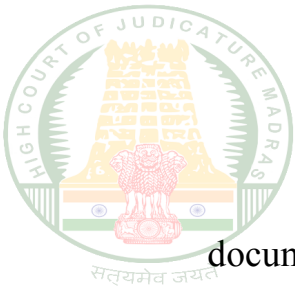


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13.2.9. In the FSL report, there was no specific mentioning about the presence of the tetrahydrocannabinol and in the absence of specific percentage of the tetrahydrocannabinol, the conviction under Section 22 (b)(ii)(c) of the NDPS Act, 1985 treating the contraband as commercial quantity is not legally maintainable, for which, he relied upon number of judgments of various Courts.

13.3. The learned Additional Public Prosecutor made the following submissions:

13.3.1. The discrepancy whether the information received either through phone or in person is immaterial and will not affect the receipt of the information and recording of the information when it was duly intimated to the superior officer and the superior officer also acknowledged the same. When all the documents reached the Court at the time of remand of the accused without any delay, the minor discrepancies relating to the evidence of the witnesses is not a ground to hold that the prosecution failed to prove the compliance of Section 42 of the NDPS Act, 1985. The evidence of P.W.2 is cogent relating to the compliance of Section 42 of the NDPS Act, 1985 and the corresponding



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document, Ex.P4 also was marked and produced before the Court and when the genuineness of the document is also not disputed, learned trial Judge has correctly held that there was compliance of Section 42 of the NDPS Act, 1985.

13.3.2.He would further submit that it is not necessary to produce the General Diary when Ex.P4 is produced to prove strict compliance of the procedure stated in Section 42 of the NDPS Act, 1985.

13.3.3.He further submitted that the non-compliance of Section 52 of the NDPS Act, 1985 is not fatal, when the entire contraband was produced before the Court and marked as material objects and there was no dispute over the marking of remaining Ganja M.O.3 as a material object and the same was identified by the occurrence witnesses.

13.3.4.This Court in *Mareeswaran vs. The Inspector of Police* reported in **2023 (2) L.W. Crl. 893** made a detailed consideration of Section 52(A) of the NDPS Act and held that when the entire contraband was produced, the compliance under Section 52 of the NDPS Act, 1985, is not necessary and hence, he seeks to reject the said submission of the

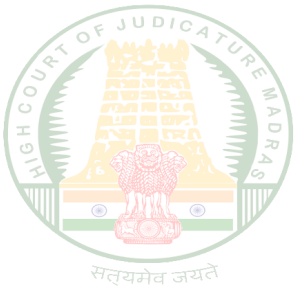


learned counsel for the appellant.

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13.3.5. The non examination of the independent witness is not material when the evidence of P.W.1 and P.W.2 are cogent and trustworthy and reliable one. The Hon'ble Supreme Court in ***Mukesh Singh Vs. State (Narcotic Branch, Delhi)*** reported in ***(2020) 10 SCC 120*** case has held that non examination of the independent witness is not a matter to disbelieve the evidence of the police witnesses, when there was no legal infirmity in their evidence.

13.3.6. As far as the last submission relating to compliance of Sections 55 and 57 of the NDPS Act, 1985, is concerned, the same is not material. But in this case, the relevant documents were marked to prove the compliance of Sections 55 and 57 of the NDPS Act, 1985. Due to the long interval between the incident and the examination of the witnesses, the witnesses made some statement contrary to the documents and the same is not a ground to disbelieve the same and when the police officers had handled number of cases and other events in their daily law and order duty. Hence, he seeks for the confirmation of the conviction and sentence imposed by the Court below.



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13.3.7. The strange argument made by the counsel relating to the absence of the tetrahydrocannabinol in the chemical analysis report is misconceived one, especially when the NDPS Act, only required the presence of cannabis. The same was found in the FSL report. Therefore, the said contention can not be accepted.

14.1 The brief facts, submission of the appellants and the learned Additional Public Prosecutor in CrI.A.(MD).No.269 and 558 of 2023:

14.1. The brief facts of the case are as follows:

14.1.1. According to the prosecution, on 11.04.2013 at 10.30 a.m, P.W.3 received the secret information about the illegal transportation of Ganja by the accused. He recorded the said information under Ex.P4, in the General Diary and informed the same to his superior and obtained the permission and went to the occurrence place along with the informer. The informer identified auto bearing Registration No.TN 58 W 5600 and they intercepted the auto and enquired them and they told their names and address. Thereafter, police team rounded the appellants and made a search on them under Ex.P1/Search intimation Letter and recovered the



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contraband of 25 Kgs of Ganja in two gunny bags and took the sample following the procedure stated in the NDPS Act. Thereafter, they arrested the accused and produced them before the Station and registered the case and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by investigation officer and he filed the final report after obtaining the chemical analysis report and also examined number of witnesses. The learned trial Judge has taken the same on file in C.C.No.228 of 2013.

14.1.2. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 20(b)(ii)(C) and 25 and 29(1) of the NDPS Act 1985 and the same was read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood for trial.

14.1.3. The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 11 documents as Ex.P.1 to



Ex.P.11 and marked four material objects as M.O.1 to M.O.4.

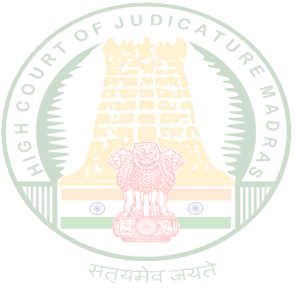
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14.1.4. When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against them, they denied the evidence as false and further stated that a false case was foisted against them. The accused neither produced any document nor examined any witnesses.

14.1.5. The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.228 of 2013 was guilty and passed the conviction and sentence as against the appellants as stated above.

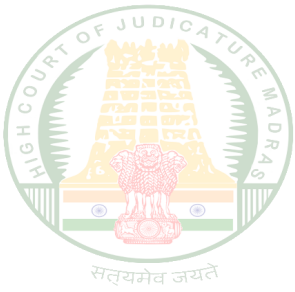
14.2. The learned counsel for the appellant made the following submissions:

14.2.1. There was total non-compliance of Section 42 of the NDPS Act. Ex.P5 was in printed form and therefore, there was doubt over its preparation as alleged by the prosecution and the immediate Superior Officer was not examined. Therefore, he seeks acquittal.



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14.2.2.The recovered contraband, namely, Ganja did not contain flowering or fruiting tops and hence, conviction under Section 20(b)(ii) (c) of the NDPS Act is not legally maintainable and hence, he seeks acquittal.



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14.3.The learned Additional Public Prosecutor made the following submissions:

14.3.1.The Non-examination of the immediate Superior is not fatal when Ex.P5 was marked and nothing elicited to discord the same during the examination of P.W.3 and the minor discrepancies between the evidence of P.W.1 to P.W.3 about the compliance is not a ground to disbelieve the recovery. Therefore, he seeks to confirm the conviction and sentence.

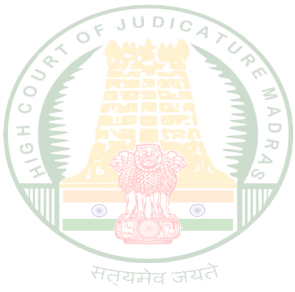
15. Further argument about recovered contraband without flowering or fruiting tops would come under the definition of the ganja under Section 2(iii)(b) of the NDPS Act:

Earlier this court passed the following order:-

“When the matter was taken up for hearing on 06.06.2025, this Court passed the following order :-

“The case is posted to clarify whether the contraband without 'flowering tops' would come under the definition of ganja under Section 2(iii) (b) of NDPS Act under the caption 'for clarification'.

2.The learned Additional Public Prosecutor would submit that the above aspect is question of



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fact and law and the same has not been raised before the trial Court, But, on going through the records, he fairly submitted that the prosecution documents have not revealed about the reference of 'flowering tops'. But, there is reference that the recovered contraband was found with “கதிர்களுடன் கூடிய சிறிய இலைகள்” and the said description denotes flowering tops and he seeks time to address the issue in detail.

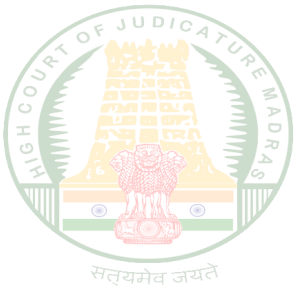
3.The said issue has its own significance and any decision is likely to have its impact on the pending huge number of cases in Tamil Nadu. Therefore, this Court inclines to give time to address the issue in order to provide opportunity to the learned Additional Public Prosecutor.

4.Accordingly, the case is adjourned to 27.06.2025 finally. The learned Additional Public Prosecutor is hereby directed to get instruction in addition to the argument on the above legal aspects:-

1. Date of the arrest of each accused and their period of incarceration.

2.Relevant portion of the recovery mahazar and the chemical analysis report.

4.It is open to the learned Additional Public Prosecutor to get expert's opinion about the percentage of the offending Narcotic Drug namely,



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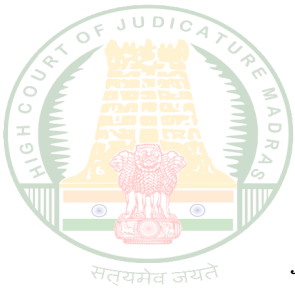


'TNC' in the recovered contraband.

5.Post the matter finally on 27.06.2025.”

*2. In continuation of hearing dated 06.06.2025, this case is taken up for hearing today and this Court asked about the consent of the learned counsel for the appellant and the learned Additional Public Prosecutor to continue the rehearing as per decision of the Hon'ble Supreme Court of India in the case of **Anil Rai Vs State of Bihar** reported in (2001) 7 SCC 318, on the legal issue whether the contraband without flowering tops would come under the definition of ganja under Section 2(iii)(b) of NDPS Act and they have consented to hear the appeal further. After getting their willingness, this Court heard the learned Additional Public Prosecutor and the learned counsel for the appellant.*

3. The learned Additional Public Prosecutor made a detailed submission by producing the “manual for use by the National Drug Analysis Laboratories” and producing the judgment of Hon'ble Supreme Court reported in 2009 2 SCC 26, and the judgment of this Court reported in CDJ 2010 MHC 2446 (Ramesh Case) and unreported judgment of this Court in Crl.OP(MD)No.18999 of 2024 that there was no reference about either flowering or fruiting tops. But, there is mentioning of 'கூதிர்கள்' and therefore, the same includes



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flowering and fruiting tops. Hence, the learned Additional Public Prosecutor submitted that the recovered ganja with leaves, seeds, “கத்திங்கள்” would come under the definition of ganja. He also submitted that as per Section 2(iii)(c) of NDPS Act, “any mixture other than the flowering tops also would come under the definition of ganja”.

4. The learned counsel for the appellant also cited the various Hon'ble High Courts and this Court and seeks this Court to hold that from the recovered ganja, the luxuriant leaves, stalk, seeds have to be excluded and conviction under Section 20(b)(ii)(C) of NDPS Act may be converted into conviction under Section 20(b)(ii)(B) of NDPS Act and seeks to reduce the sentence of imprisonment.

5. After hearing the learned counsel appearing for both side at length, this Court reserved the matters for judgment.”

15A. Points for determination in all appeals:

i) Whether the conviction and sentence imposed against the appellants vide impugned judgments is maintainable or not ?

ii) Whether the case of the appellants that his case is come under



the Section 8(C) r/w 20(b)(ii)(B) of the NDPS Act or not? If so what shall be the proportionate punishments?

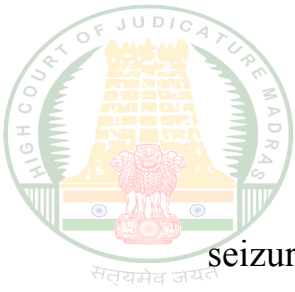
16. Discussion on the compliance of the Section 42 of the NDPS

Act:

16.1. Section 41(1) of the NDPS Act empowers the jurisdictional learned Judicial Magistrate to issue warrant for arrest of person or for the search of any building, conveyance or place to the officers, who come under the purview of the NDPS Act, who have reason to believe any narcotic drugs or psychotropic substance or controlled substance is illegally acquired or concealed.

16.2. Section 41(2) of the Act empowers the searching officer, who has received the information to search and arrest for the illegal possession, concealment, transportation as mentioned in the NDPS Act relating to the narcotic drugs or psychotropic substance or controlled substance.

16.3. Section 42 of the Act following Section 41 of the Act mandates to follow certain procedures in the case of the arrest and

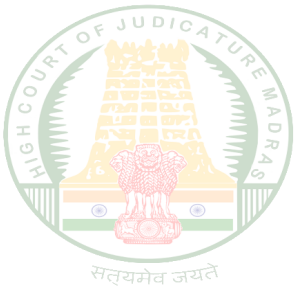


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seizure on the basis of the information. The object of the procedure enumerated under Section 42 of the Act either to arrest or search the person and recover the contraband is to safeguard the constitutional right envisaged in the Constitution of India for the reason that the same can be made without obtaining any warrant from the Court.

16.4. As per the Section 42 of the Act, if the empowered officer has received the secret information about the illegal possession, transportation of narcotic drugs or psychotropic substance or controlled substance, the empowered officer is duty bound to reduce the said information in writing and shall send the same to his immediate superior before proceeding further to conduct search, nab the accused and recover contraband. The Hon'ble Constitution Bench of the Supreme Court in the case of ***Karnail Singh v. State of Haryana***, reported in **(2009) 8 SCC 539** has considered the said requirement and laid the following guidelines:-

“35. In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be



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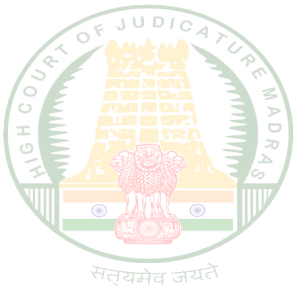


fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by



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a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

16.5. By applying the above principle, this Court proceeds to



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discuss about the compliance of the Section 42 on the facts of each appeal:

16.6. Discussion on the compliance of the Section 42 in Crl.A.

(MD).No.212 of 2020:-

16.6.1. In **Crl.A.(MD).No.212 of 2020**, P.W.2 received the secret information about the illegal possession of the contraband, and he reduced the same in writing. He reported the said information to his Immediate Superior. The Immediate Superior also acknowledged the same. To prove the same, the prosecution has produced Ex.P.6. Extract of Ex.P6 is as follows:

16.6.2. From the perusal of Ex.P.6 and appreciation of evidence of P.W.2, this Court finds there is compliance of mandatory requirements of Section 42 of the Act. The learned counsel for the appellant heavily relied on the discrepancies relating to the recording of information and reducing it in writing and reporting the said reduced information in writing to his superior officer to disbelieve the case of the prosecution about the compliance of the procedure stated in Section 42 of the Act.



தகவல்
திண்டுக்கல் போதைப் பொருள் நுண்ணறிவுப் பிரிவு காவல் உதவி ஆய்வாளர் ஆகிய எனக்கு ரகசிய தகவலாளி தொலைபேசியில் தொடர்பு கொண்டு இன்று 30.03.2019-ம் தேதி 08.30 மணிக்கு என்னிடம் சொன்ன தகவலின் விவரம்

செம்பட்டி to ஒட்டன்சத்திரம் ரோடு, ஆத்தூர் பிரிவு ரோடு அருகே சித்தையன்கோட்டை நரசிங்கபுரம் பாலமரத்தான் (எ)கருப்பதேவர் மகன் கணேசன் என்பவர் அரசாங்கத்தால் தடை செய்யப்பட்ட போதைப் பொருளான கஞ்சாவை கொண்டு வருகிறார். மேற்படி இடத்திற்கு தவறாமல் வந்தால் மேற்படி நபரை கஞ்சாவுடன் பிடிக்கலாம் நான் அடையாளம் காண்பிக்கிறேன்.

தகவலாளி

மேற்படி தகவலை 30.03.2019-ம் தேதி 08.45 மணிக்கு பதிவு செய்யப்பட்டது.

பணிநது சமர்ப்பிக்கின்றேன்.
அம்மா.

காவல் உதவி ஆய்வாளராகிய நான் மேற்படி தகவலை தகவல் ஆய்வாளராகிய தங்களிடம் சமர்ப்பித்துள்ளேன். மேல் நடவடிக்கை எடுக்க உத்திரவிட கேட்டுக் கொள்கிறேன்.

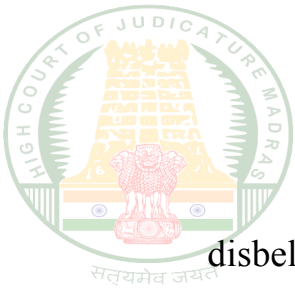
காவல் உதவி ஆய்வாளர்,
போ. பொ. நு. பிரிவு,
திண்டுக்கல்.
30.3.2019

காவல் உதவி ஆய்வாளர்,
போ. பொ. நு. பிரிவு,
திண்டுக்கல்.
30.3.2019

Sir,

Received the information report
On 30.03.19 at 08.45 hrs and instructed
32 of police to conduct raid vehicle
check with team and with necessary
equipments
V.R. Srinivasan
Supt of Police
Nileid Dindigul.

The learned counsel for the appellant also submitted that the Immediate Superior officer who is said to have received the information has not deposed about the receipt of the information from the searching officer. When the document Ex.P.6 is produced and marked without objection and the same was proved through the examination of author of the document and the signature of the officer found in the document is also not disputed and the same reached the Court within reasonable time, the non-examination of the Immediate Superior to depose about the said acknowledgment of information is not a material circumstance to



disbelieve the evidence of PW2 by discarding Ex.P6.

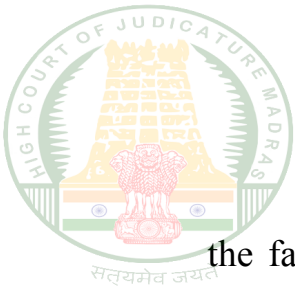
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16.6.3. The acknowledgment of information submitted by the searching officer to the immediate superior is a material circumstance and the same has to be decided on the fact of each case. The fact *i.e.*, the *acknowledgment of information submitted by the searching officer* should be proved either through marking of document or examining the witnesses. In this case, Ex.P.6 was produced to prove the compliance of Section 42 of the NDPS Act and the same was not objected by the defence at the time of marking. Ex. P6 contains four material things:-

- a. The receipt of information by the P.W. 2*
- b. he recorded the same in the general diary*
- c. he has reduced the same into writing and informed to the immediate superior and*
- d. The immediate superior also acknowledged the same.*

16.6.4. The said Ex. P6 was prepared while discharging the official duty of the searching officer and hence presumption under Section 114 (e) of the Evidence Act could be drawn.

16.6.5. When the evidence of PW2 and Ex P6 sufficiently proved

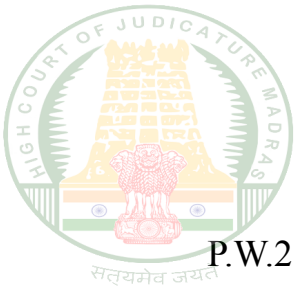


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the factum of the compliance of Section 42 of the NDPS Act it is not necessary to prove the same fact by examining the immediate superior.

Therefore, non-examination of the immediate superior can not in any way affect the prosecution case of compliance of requirement of Section 42 of NDPS Act.

16.6.6. The minor discrepancies in the evidence of the P.W.2 and P.W.3 about compliance of Section 42 of the NDPS Act without affecting the core issue of the prosecution case of receipt of information, are not grounds to disbelieve the compliance. Further, the Hon'ble Supreme Court reiterated the principle that unless the discrepancies go to the root of the prosecution version, the same is not a ground to disbelieve the testimony of the witness. Apart from that, police officers had been examined after a lapse of several months and we cannot expect them to keep everything vivid in their memory. Each witness would depose in his own way on his perception of the occurrence. One may say 'a' the other may say 'A'. Therefore, sitting in the armchair, this Court cannot expect the witness to depose before the Court with photographic memory. Therefore, this Court finds that the prosecution clearly established the strict compliance of Section 42 of the Act, on the basis of the evidence of



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P.W.2 & Ex.P.6. Therefore, this Court is not inclined to accept the argument of learned counsel for the appellant that the prosecution has not complied with the requirement of Section 42 of the Act.

16.7. Discussion on the compliance of the Section 42 in Crl.A.

(MD).No.172 of 2023:-

16.7.1 In **Crl.A.(MD).No.172 of 2023.**, P.W.1 received the secret information on 21.08.2019, at 10.00 a.m, about the illegal possession of the contraband with the appellant and he made an entry in the General Diary and reducing it in writting. He clearly deposed about the receipt of information and entry in the General Diary and reduced it in writing under Ex.P.1. Ex.P.1 also has been duly communicated to P.W.3, the Immediate Superior. The said Ex.P.1 is extracted hereunder:-



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4. Prosecution Side Exhibits
கூகை 24-D

Ex.P.1 தேன் வானம்புலன் நகரம் குற்றம்
பற்றி கூறிய ஆய்வு அறிக்கை ம.ச.இன் ஆய்வு அறிக்கை
24.08.19ல் 09.30 மணிக்கு கூடல் அறிவுரை அளித்து
பொது சான்றிதழ் பெற்றுக் கொடுத்த நகரம் நகரம்
ஆதாரம் அளித்து சித்திரம் காட்டி காண 10.30
மணிக்கு 11.30 மணிக்கு அங்கு சான்றிதழ்
பெற்று பின்னர் கூடல் அறிவுரை அளித்து
கூடல் அறிவுரை அளித்து அங்கு அங்கு
புற-ம/3-9A அங்கு அங்கு அங்கு அங்கு
புற-ம/3-9A அங்கு அங்கு அங்கு அங்கு
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அங்கு அங்கு அங்கு அங்கு அங்கு அங்கு

Sir
கூடல் அறிவுரை அளித்து அங்கு அங்கு
அங்கு அங்கு அங்கு அங்கு அங்கு அங்கு
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அங்கு அங்கு அங்கு அங்கு அங்கு அங்கு

CC429/19

SI

Ex.P1
P.W1
30/9/20
கூடல்

Mr. Sartheesh conduct
Raid and report



கூடல் அறிவுரை அளித்து அங்கு அங்கு
அங்கு அங்கு அங்கு அங்கு அங்கு அங்கு
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BY ORDER
N. M. M.
HEAD CLERK
NDPS COURT
MADRAS

16.7.2. P.W.3, the Immediate Superior, also deposed about the receipt of information. This Court perused Ex.P.1 along with the evidence of P.W.1 and P.W.3. The considered opinion of this Court is that there is meticulous compliance under Section 42 of the Act. Hence, the contention of the learned counsel for the appellant that there was no



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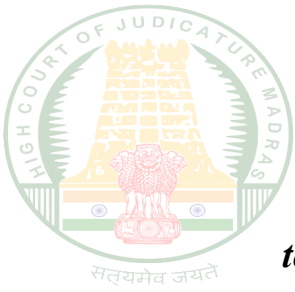
compliance under Section 42 of the Act cannot be accepted and this Court holds that prosecution proved the compliance of Section 42 of the Act through oral and documentary evidence.

16.8 Discussion on the compliance of the Section 42 in CrI.A.

(MD).No.293 of 2021:-

16.8.1. In this case, P.W.1 received the secret information on 05.06.2019 at 04.00 p.m and he recorded the same in General Diary and reduced it in writing under Ex.P.1 and informed P.W.3. P.W.3 acknowledged the same and deposed that he received the information and directed to proceed for search. The said evidence is cogent and trustworthy and the content of Ex.P.1 is as follows:-

16.8.2. Even though the learned counsel for the appellants raised some suspicions about Ex.P.1 on the ground that the same was produced belatedly, this Court is not inclined to accept the same without any material to show that the same was concocted when the evidence of P.W. 1, P.W.2 is clear and when there is no reason to suspect the genuiness of the contemporaneous document containing the signature of the appellant namely, Ex.P.3 at the relevant point of time of recovery i.e., 05.06.2019, at 04.00 pm. This Court is unable to accept the case of the learned



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*to the immediate superior and
d. The immediate superior also acknowledged the
same.*

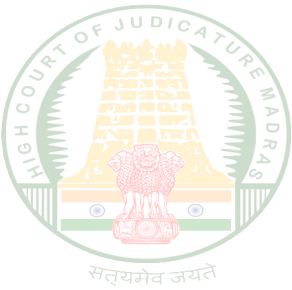
16.8.4. Therefore, this Court declines to accept the argument of the learned counsel for the appellants that prosecution has not complied with the requirement of Section 42 of the NDPS Act, 1985 without proof of manipulation of the above documents.

16.9 Discussion on the compliance of the Section 42 in CrI.A.

(MD).No.331 of 2023:-

16.9.1 In **CrI.A.(MD).No.331 of 202**, P.W.1 received the secret information on 05.06.2019 at 04.00 p.m and he recorded the same in General Diary and reduced it in writing under Ex.P.1 and informed P.W3. P.W.3 acknowledged the same and deposed that he received the information and directed to proceed for search. The said evidence is cogent and trustworthy and the content of Ex.P.1 is as follows:-

16.9.2. Even though the learned counsel for the appellants raised some suspicion about genuiness of Ex.P.2 on the ground that the same was produced belatedly, this Court is not inclined to accept the same without any material to show that the same was concocted when the



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-39-
EX.P.4

பிழைப்புரை :-
அரசால் நேரப்பாடுபட்ட (நினைவு) ...
இவ் விவரம் ... நினைவுக்கீழ் ...
நினைவுக்கீழ் ...

பிழைப்புரை :-
நீதிமன்ற நீதிக்கீழ் ...
இவ் விவரம் ... நினைவுக்கீழ் ...
நினைவுக்கீழ் ...

மேலும் :-
இதற்குப் பின்னர் 20/3/21 அன்று அனைத்து ...
600 மீட்டர் ... இவ் விவரம் ...
இதற்குப் பின்னர் 20/3/21 அன்று அனைத்து ...
இவ் விவரம் ... நினைவுக்கீழ் ...
நினைவுக்கீழ் ...

22 MAR 2021

Siv Received at Chapal on 20-3-21 at
07.00 hrs. at NS Nagar, Indigul
EXP4
PW2
17.10.2022
Judge

BY ORDER
N. M. M.
HEAD CLERK,
INDPS. COURT,
MADRAS

evidence of P.W.1 and P.W.3 is clear and when there is no reason to suspect the genuiness of the contemporaneous document containing the signature of the appellant namely, Ex.P.2 at the relevant point of time of recovery i.e., 20.03.2021 at 09.30 am. This Court is unable to accept the case of the learned counsel for the appellant that there are suspicion over

Page 116/278



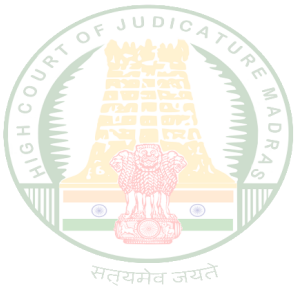
Ex.P.2. Therefore, this Court finds compliance of Section 42 of the Act.

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16.10. Discussion on the compliance of the Section 42 in Crl.A.

(MD).No.396,397,399,400 of 2023:-

In Crl.A.(MD).No. 396, 397, 399, 400 of 2023, P.W.2 clearly deposed about the compliance of Section 42 of the NDPS Act. According to P.W.2, he received the secret information and he reduced it in writing and the same was forwarded to his superior/P.W.3. P.W.3 also clearly deposed about the receipt of the said information. The proper endorsement is also available in Ex.P.4. According to the learned counsel appearing for the appellants, Ex.P.4 served upon the appellants does not contain any endorsement made by P.W.3. Therefore, the said document was concocted one. But, this Court is unable to accept the said argument on the ground that the document is available before the Court with endorsement of P.W.3 to conduct the raid. The submission of the learned counsel appearing for the appellants that Section 42 was not complied with cannot be accepted. P.W.1, P.W.2 and P.W.3 cogently deposed about the compliance of Section 42 of NDPS Act and contemporaneous document/Ex.P.4 affirmed the said fact. Therefore, the prosecution clearly proved the compliance of Section 42 of the NDPS Act.

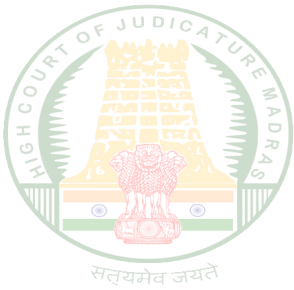


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16.11.Discussion on the compliance of the Section 42 in CrI.A.

(MD).No. 507 of 2023:-

In CrI.A.(MD).No. 507 of 2023, P.W.1 received the secret information on 01.12.2021, at 09.00 a.m, about the illegal transportation of contraband in the car bearing Reg.No.TN-65-Q-1507. He recorded the said information in the General Diary and reduced it in writing and sent the same to his immediate superior under Ex.P.1. Ex.P.1 clearly mentions about the receipt of information and entry in the General Diary and reduced it in writing under Ex.P.1 and the same was also duly communicated to P.W.3, Immediate Superior and P.W.3 also acknowledged the same with specific endorsement. P.W.3, Immediate Superior has also deposed about the receipt of information. This Court perused Ex.P.1 along with the evidence of P.W.1 and P.W.3. The considered opinion of this Court is that there is scrupulous compliance under Section 42 of the Act. The said Ex.P.1 is extracted hereunder:-



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4) Prosecution Side Exhibits
-21-
Ex.P.1

தகவல்

இராமநாதபுரம் கேணிச்சுரை காவல் நிலைய சார்பு ஆய்வாளர் கிருஷ்ணசுப்பிரமணியன் ஆகிய நான் இன்று 01.12.2021 ந்தேதி காலை 09.00 மணிக்கு கிருஷ்ணசுப்பிரமணியன் இராமநாதபுரம் இரகசியத் தகவலாளர் என்னை கொலைபேசியில் தொடர்பு கொண்டு இன்று 01.12.2021 ம் தேதி காலை சுமார் 10.00 மணி முதல் 11.00 மணிக்குள் இராமநாதபுரம் சேதுபதி நகர் வடக்கு அம்மா புவகாணிந்ரு வடக்கு பக்கம் உள்ள ரோட்டில் போதைப் பொருளான கஞ்சாவை விற்பனை செய்வதற்காக இராமநாதபுரம் டிராபிநகர் 3-வது தெருவைச்சேர்ந்த பூபதி மகன் விக்னேஸ்வரன் என்ற விக்ரியும், தேர்த்தங்கால் கிராமத்தைச்சேர்ந்த தற்போது குரங்கோட்டை காலனியில் வசித்து வரும் ராம மகன் சங்கர் என்பவரும் தேனி புளூ கலர் காரில் கொண்டு வருவதாக தகவல் உள்ளதாகவும், மேற்படி இடத்திற்கு மேற்குறிப்பிட்ட நேரத்திற்கு வந்தால் போதைப் பொருளான கஞ்சாவுடன் அவர்களையும் பிடிக்கலாம் என்று தகவல் தெரிவித்தார். எனவே எனக்கு கிடைத்த மேற்படி தகவலை பொதுநாடகுறிப்பில் பதிவு செய்துவிட்டு தாங்களிடம் சமர்ப்பிக்கிறேன். மேல் நடவடிக்கை எடுக்க தகுந்த அனுமதி கோருகிறேன்.

True Copy

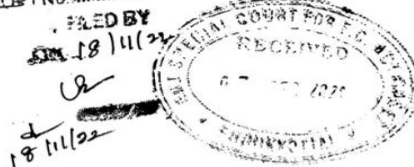
X. Sankar
Head Clerk
Addl. Dist. and Sessions Judge
Spl. Court for E.C. and NDPS Act. Cases
Pudukkottai.

சார்பு ஆய்வாளர்
கேணிச்சுரை காவல் நிலையம்
இராமநாதபுரம்
01.12.2021

Yes Permitted on 01.12.2021 at 09.15 hr

A. Malanamy
Inspector of Police
Kenikarai Police Station
Ramanathapuram Dist.

AC-30/22
C.I.S.C. MOVING
EXP: P1
P.W. 1



16.11.2. Therefore, the contention of the learned counsel for the appellant that there was no compliance under Section 42 of the Act is misconceived one. This Court concurs with the finding of the Learned
Page 119/278



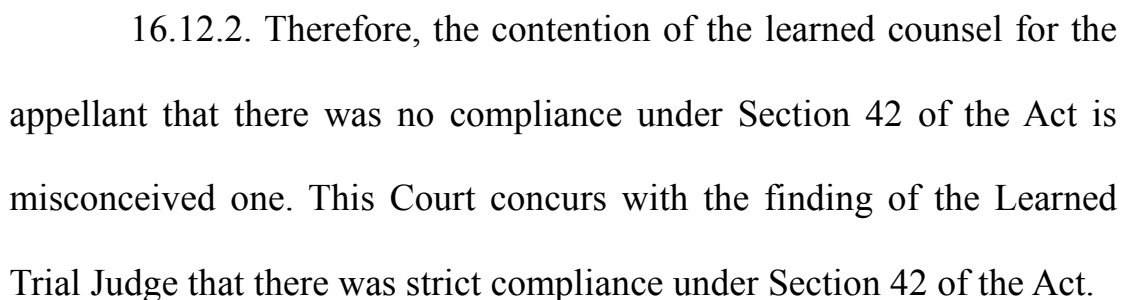
Trial Judge that there was strict compliance under Section 42 of the Act.

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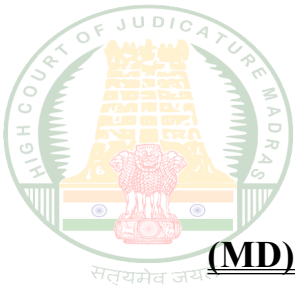
16.12.Discussion on the compliance of the Section 42 in Crl.A.

(MD).No. 534 of 2022:-

In Crl.A.(MD).No. 534 of 2022, P.W.2 received the secret information on 29.02.2020, at 10.00 a.m, about the illegal transportation of contraband and he recorded the same in General Diary and reduced it in writing under Ex.P.5 and informed to P.W.3, Immediate Superior and P.W.3 also acknowledged the same with specific endorsement. P.W.3, has also deposed about the receipt of information. This Court perused Ex.P.5 along with the evidence of P.W.2 and P.W.3. The considered opinion of this Court is that there is scrupulous compliance under Section 42 of the Act. The said Ex.P.5 is extracted hereunder:-



16.13. Discussion on the compliance of the Section 42 in CrI.A.



(MD).No. 551 of 2023:-

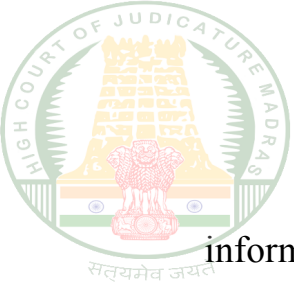
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In CrI.A.(MD).No. 551 of 2023, P.W.1 received the secret information on 07.05.2016 at about 10.00 am, about the illegal possession of the contraband by the appellants. P.W.1 reduced it in writing after making the entry in the General Diary. He also sent the information to the Immediate Superior namely, P.W.3. P.W.3 also acknowledged the same by subscribing his signature and granted permission to conduct raid. The said document was marked under Ex.P.1. The same reached the Court on the date of the recovery itself. There was no dispute over the said document. P.W.2 clearly deposed about the said facts in a cogent manner and P.W.3 also deposed about the acknowledgement of the information. Therefore, the contention of the learned counsel for the appellants that there is non-compliance of Section 42 of the Act, is misconceived one and the same is against the facts. In this aspect, the prosecution clearly proved the compliance under Section 42 of the Act.

16.14.Discussion on the compliance of the Section 42 in CrI.A.

(MD).No. 588 of 2023:-

In CrI.A.(MD).No.588 of 2023, P.W.2 received the secret



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information on 08.12.2021 and he recorded the same in General Diary and reduced it in writing under Ex.P.8 and informed to P.W.3. P.W.3 acknowledged the same and deposed that she received the information on 08.12.2021 at 05.00 p.m. The said evidence is cogent and trustworthy and the content of Ex.P.8 is as follows:-

.....இன்று 08.12.2021 தேதி 17.00 மணிக்கு அல்லி நகரம் காவல்நிலைய சார்பு ஆய்வாளர் ஃ.முருகேசன் ஆகிய நான் நிலைய அலுவலில் இருந்தபோது எனக்கு கிடைத்த ரகசிய தகவலில் பெற்று பெரியகுளம் கைலாசம்பட்டியைச் சேர்ந்த முன்று நபர்கள் வெளியூரிலிருந்து கஞ்சா வாங்கி வந்து அல்லிநகரம் பாண்டி கோயில் மலையடிவாரம் முட்டிதர் அருகே விற்பனைக்காக கொண்டு வருவதாகவும் நீங்கள் உடனே அங்கு சென்றால் அவர்களை பிடித்துவிடலாம் என்று தெரிவித்ததை பொதுநாட்குறிப்பில் பதிவு செய்து காவல் ஆய்வாளர் அவர்களுக்கு தகவல் தெரிவித்தேன்.

16.14.2. Even though the learned counsel for the appellants entertained a suspicion about Ex.P.8 on the ground that the same was produced belatedly, this Court is not inclined to accept the same without any material to show that the same was concocted when the evidence of P.W.1, P.W.2 is cogent and above suspicion. This Court is unable to accept the case of the learned counsel for the appellant that there is suspicion over Ex.P.8. The investigating agency stated that due to the inadvertance, Ex. P8 was not produced at the time of filing final report and the same was in the CD file. The explanation by the officer for

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belated production of Ex.P.8 is acceptable. The explanation of appellant that he was taken by the police and a false case foisted, was not disclosed by him under 313 Cr.P.C questioning and at the time of remand. Moreover, this Court feels that the belated production of Ex.P.8 is not an isolated circumstance to accept the argument of the appellant that the same was concocted one. Therefore, Section 42 of the Act is strictly complied.

16.15.Discussion on the compliance of the Section 42 in Crl.A.

(MD).No. 724 of 2023:-

In Crl.A.(MD).No. 724 of 2023, P.W.2 received the secret information on 17.11.2016, at 12.30 p.m, about the appellants' illegal possession of the contraband and he made an entry in the General Diary and reduced it in writing. He clearly deposed about the receipt of information and entry in the General Diary and reduced it in writing under Ex.P.6. Ex.P.6 also was duly communicated to P.W.4, the Immediate Superior. P.W.4, Immediate Superior, also acknowledged the same and it was marked as Ex.P.7. This Court perused Ex.P.6 and Ex.P.7 along with the evidence of P.W.1 and P.W.2. The considered opinion of this Court is that there is strict compliance of Section 42 of the Act. The



contents of Ex.P.7 are extracted hereunder:-

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33 -
EX.P.7
7
அனுப்பி
P.7-4 ஆய்வாளர்,
கம்பம் வடக்கு காவல் நிலையம்,
கம்பம்.
பெறுநர்
உயர்திரு காவல் ஆய்வாளர் அவர்கள்,
கம்பம் வடக்கு காவல் நிலையம்,
தேனி மாவட்டம்.
அப்பா.
வாரது:- 42(2) NDPS Act-ன்படி கஞ்சா ரைடு செய்ய
அனுமதி கோருவது - சம்மந்தமாக.
-X-X-X-

இன்று 17.11.16 -ம் தேதி 12.30 மணிக்கு எனது ரகசிய
தகவலாளி நிலையத்தில் ஆஜராகி கம்பம் சூரமைய சூர நாத
P.7-4 ஆய்வாளர் அவர்கள்
கஞ்சா கடத்தி வருவதாக தகவல் உள்ளது. என்னுடன் வந்தால்
அவர்களை அடையாளம் காட்டுவேன் என கூறினார். உடனே நான்
P.7-4 ஆய்வாளர் அவர்கள், P.7-4 ஆய்வாளர்
ஆகியோர்களுடன் கஞ்சா எனும் போதைப்பொருள் குற்றம் சம்மந்தமாக
கண்டுபிடிக்க தகுந்த உபகரணங்களுடன் செல்கிறேன். இந்த தபாலை
HC-1261 சூரமைய சூர நாத
என்பவர் மூலம் தபால் கொடுத்து
உள்ளேன் என்ற விபரத்தை பணிந்து தெரிவித்துக் கொள்கிறேன்.
ADPL. APL. COURT FOR NDPS.
MADURAI. 192
CC NO. 192

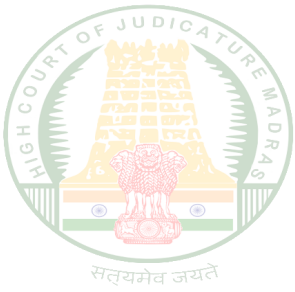
14/12/16
Sir,

Received The Information on 17.11.16 at 12.45
and give The Permission for execution



BY ORDER
K. G. S. 14/12/16
HEAD CLERK,
ADPL. SPL. COURT FOR NDPS. AC
MADURAI.

16.15.2. Therefore, the contention of the learned counsel for the
appellants that there was no compliance under Section 42 of the Act
cannot be accepted.

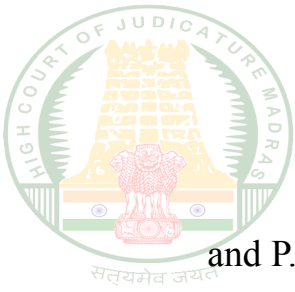


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16.16. Discussion on the compliance of the Section 42 in CrI.A.

(MD).No. 773 of 2023:-

In CrI.A.(MD).No. 773 of 2023, on 16.06.2020 at 06.00 a.m, P.W.1 received the secret information about the illegal transportation and possession of the contraband, and he reduced the same in writing. He reported the said information to his Immediate Superior. P.W.4, Immediate Superior also acknowledged the same. To prove the same, the prosecution marked Ex.P1 and P2. From the perusal of Ex.P1 and Ex.P2. and an appreciation of evidence of P.W.1 and P.W.4 this Court finds that there was strict compliance of mandatory requirements of Section 42 of the Act. The learned counsel for the appellants heavily relied on the discrepancies relating to the recording of information and reducing in writing and reporting the said information reduced in writing to his superior officer to disbelieve the case of the prosecution about the compliance of the procedure stated in Section 42 of the Act. It is argued that there is a material discrepancy between the evidence of the PW4 Immediate Superior and the PW1 searching officer relating to the compliance of Section 42 of the Act. This Court finds no material discrepancies which would discredit the testimony of the witness P.W.1

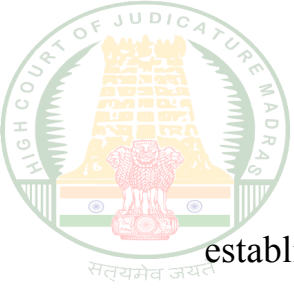


and P.W.4 in this aspect.

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16.16.2. When the Immediate Superior officer comes into the box and deposes about the receipt of the information, there is no further requirement about the compliance of Section 42 of the Act. The minor discrepancies in the evidence of the 'Immediate Superior' and the 'Searching Officer' which have not affected the prosecution case of receipt of information are not a grounds to disbelieve the compliance. Further, the Hon'ble Supreme Court reiterated the principle that unless the discrepancies go to the root of the prosecution version, the same is not a ground to disbelieve the testimony of the witness. Apart from that, most of the witnesses are the police officers and examination was conducted after a lapse of several months and we cannot expect them to keep everything vivid in their memory. Each witness would depose in his own way on his perception of the occurrence. One may say 'a' the other may say 'A'. Therefore, sitting in the armchair, this Court cannot expect the witness to depose before the Court with photographic memory.

16.16.3. Therefore, this Court finds that the prosecution clearly

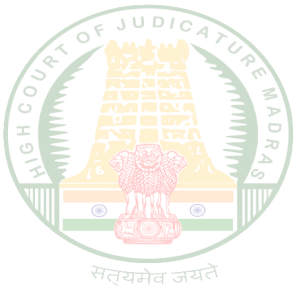


established the strict compliance of Section 42 of the Act, on the basis of the evidence of P.W.1 and P.W.4 and Ex.P.1 and Ex.P.2.

16.17. Discussion on the compliance of the Section 42 of the NDPS Act in CrI.A.(MD) No. 322 of 2023:

P.W.2 received the secret information about the illegal possession of 25 kgms of ganja by the appellant. He reduced the same in writing under Ex.P4 and informed to his immediate superior, namely, P.W.3. P.W. 3 also acknowledged the said fact in his deposition about the receipt of the information. The relevant evidence of P.W.3 is as follows:

கடந்த 08.09.2015-ம் தேதி நான் திண்டுக்கல் போதை பொருள் நுண்ணறிவு பிரிவு ஆய்வாளராக பணியில் இருந்த போது சிறப்பு சார்பு ஆய்வாளர் செல்வபாண்டி அவருக்கு கிடைத்த தகவலை பெற்று பதிவு செய்து அந்த நகலை எனக்கு அனுப்பி வைத்தார். நான் பார்த்தேன். பிறகு அவர் சம்பவ இடம் சென்று எதிரி சின்னத்துரை மற்றும் வழக்கு சொத்துக்களுடன் 14.00 மணிக்கு நிலையம் வந்தும் 57 பிரிவு படி விரிவான அறிக்கை தாக்கல் செய்து என்னிடம் ஒப்படைத்தார். அந்த 57 அறிக்கையை நான் கையொப்பம் செய்தேன் பின்னர் எதிரி நீதிமன்ற காவலுக்கு அனுப்பி வைத்தேன்.



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16.17.2. Ex.P4 also was produced to show that he reduced the same in writing. All the said documents were produced before the Court on the date of remand of the accused itself. Therefore, this Court declines to accept that there was no compliance of Section 42 of the NDPS Act, 1985.

16.17.3. The discrepancies projected by the learned counsel for the appellant between the evidence of P.W.2 and P.W.3 is not material one to disbelieve the compliance of Section 42 of the NDPS Act, 1985. Therefore, this Court is unable to accept the said argument.

16.18. Discussion on the compliance of the Section 42 in CrI.A.

(MD).No. 269 & 558 of 2023:-

On 11.04.2013 at about 10.30 am., P.W.3 received the secret information about the illegal possession and transportation of ganja by the appellants. He recorded in the General Diary and reduced the same in writing under Ex.P4 and informed to his immediate superior and he also acknowledged and the said document was marked under Ex.P5, is extracted hereunder:



- 38 -

சா.க-5

அனுமதி கடிதம்

அனுப்பவர் :

V.சீதாராமன்,
காவல் ஆய்வாளர்,
சி.ஐ.கிமேடு (சஞ) காவல் நிலையம்,
திலகத்திடல் (சஞ) சரகம்,
மதுரை மாநகர்.

பெறுநர் :

கனம் நான் உதவி ஆணையர்,
திலகத்திடல் (சஞ) சரகம்,
மதுரை மாநகர்.

மதிப்பிற்குரிய அப்பா,

பொருள்: போதைப்பொருள் மற்றும் மனமயக்க பொருட்கள் தடுப்புச் சட்ட
வழக்கு - மதுரை டவுன் புது ஜெயில் ரோடு ஏ.ஏ.ரோடு
சந்திப்பில் ஆட்டோவில் மூன்று நபர்கள் கஞ்சா கொண்டு
வருதாக தகவலளி கொடுத்த தகவலின் பேரில் நடவடிக்கை
எடுக்க அனுமதி வேண்டி.

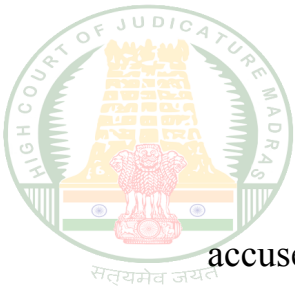
இன்று 11.04.2013ம் தேதி 10.30 மணிக்கு மதுரை மாநகர் சி.ஐ. கிமேடு
(சஞ) காவல் நிலைய ஆய்வாளராகிய நான் திலையத்தில் ஆஜரில் இருந்தபோது
எனது ரகசிய தகவலாளி நேரில் ஆஜராகி, தனக்கு நன்கு அடையாளம் தெரிந்த
1)சிவனம்மாள் (எ) சிவமணி, W/o காசிமாயன், 2)ஆண்டிச்சாமி (எ) ஆண்டி, S/o
மாயாண்டி தேவர், 3)பாண்டி, S/o ராஜீ் பேயாண்டி தேவர் ஆகியோர்கள் மொத்தமாக
கஞ்சா வங்கி கொண்டு, ஆட்டோவில் மதுரை டவுன் புது ஜெயில் ரோடு ஏ.ஏ.ரோடு
சந்திப்பு வழியாக வருவதாகவும், உடன் வந்தால் நான் அடையாளம் காட்டுகிறேன்.
மேற்கொண்டு நடவடிக்கை எடுத்துக் கொள்ளலாம் என சொன்ன தகவலை பதிவு
செய்தேன். மேற்படி தகவலின் பேரில் தொடர் நடவடிக்கை எடுக்க அனுமதி வழங்க
வேண்டுகிறேன்.

Inspector CT Lto for conducting a raid
immediately and report to the Honble
Magistrate in time.

சா.கிமேடு (சஞ) க. சி.
மதுரை மாநகர்.

HEADCLERK,
PRINCIPAL SPECIAL COURT,
NDPS ACT CASES,
MADRAS.

16.8.2. From the above, it is clear that there was a strict compliance of Section 42 of the NDPS Act, 1985. Further, all the said documents were produced before the Court on the date of remand of the



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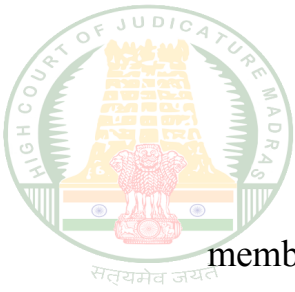
accused itself. The discrepancies noted by the learned counsel for the appellants between the evidence of P.W.1, P.W.2 and P.W.3 is not material one to disbelieve the compliance of Section 42 of the NDPS Act, 1985. Therefore, this Court is unable to accept the said argument. Therefore, this Court declines to accept that there was no compliance of Section 42 of the NDPS Act, 1985.

17. Discussion on the compliance of the Section 50 of the NDPS

Act:

17.1. The learned counsel for the appellant would submit that the searching officer made a search on the body of the accused and also the bag of the accused and the officers should have strictly complied the mandate of Section 50 of the NDPS Act. The searching officer has given joint search option to all the accused. In the said alleged search memo, they had not obtained the signature of all the accused. Therefore in this case, there is no compliance of section 50 of NDPS Act.

17.2. The learned Additional Public Prosecutor would submit that if the contraband was recovered either from the bag of the accused or vehicle of the accused, the compliance of the section 50 of NDPS Act need not be followed. As per the evidence of the searching officer and the



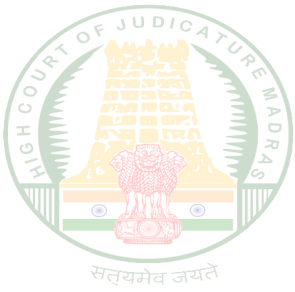
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member of the searching team, they gave clear option orally about the right to be searched before the Gazetted officer or learned nearby Judicial Magistrate and thereafter they reduced it into writing. Oral option itself is compliance of section 50 of NDPS Act. Two Constitution Bench Judgment of the Hon'ble Supreme Court never insisted to prepare individual consent letter and the only requirement is to inform their right. When the evidence are cogent and trustworthy about the oral information of the right of the accused to be searched in the presence of the Gazetted officer or learned nearby Judicial Magistrate, failure of the searching officer to obtain signature in the joint consent letter is not a ground to hold that section 50 of NDPS Act was not complied with to seek acquittal.

17.3. To consider the non compliance of section 50 of NDPS Act, this court likes to summarise the principles laid down by the Hon'ble Supreme Court based on the Hon'ble Constitution Bench in the case of:

1. ***“State of Punjab Vs Baldev Singh reported in 1999 (6) SCC 172”*** and
2. In the case of ***“Ranjan Kumar Chadha Versus State of Himachal Pradesh” reported in 2023 SCC Online SC 1262”***.

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17.4. To consider the development of the march of law from 1999

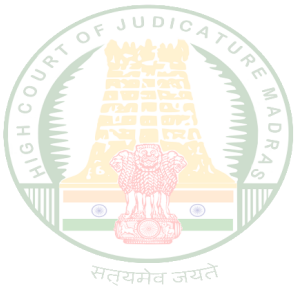
(6) **SCC 172** to **2023 SCC Online SC 1262**, this court divides the case laws into three categories:-

17.4.1. The conflicting decisions between various Judgments of the Hon'ble Supreme Court before 1999 relating to the applicability of Section 50 of NDPS Act to seizure of the contraband from the accused other than his body is settled by the Hon'ble Constitution Bench in the case of “***State of Punjab Vs Baldev Singh*** reported in **1999 (6) SCC 172**”.

17.4.2. In spite of the specific law laid down by the Hon'ble Constitution Bench, again the issue of applicability of section 50 of NDPS Act was referred to the Hon'ble Three Judges Bench of Hon'ble Supreme Court in case of ***State of H.P. Vs. Pawan Kumar*** reported in **2005 (4) SCC 350** to resolve the conflicting decisions and the Hon'ble Supreme Court in Pawan Kumar case has held as follows:

“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as

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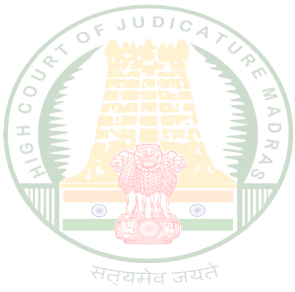


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such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the words “search of person”. One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being



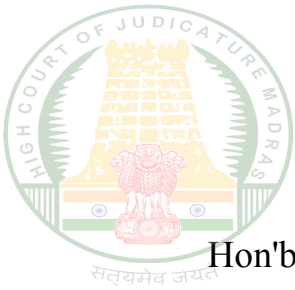
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unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.”

17.4.3. The view taken in the case of Pawan Kumar has been reaffirmed once again by the Hon'ble Constitution Bench in the case of ***Vijaysingh Chandubha Jadeja v. State of Gujarat*** reported in **(2011) 1 SCC 609**.

17.4.4. In spite of the clear law laid down by the Hon'ble larger Bench of Supreme Court, once again there was some cleavage in the Hon'ble two judges bench of Supreme Court with respect to the applicability of section 50 NDPS Act in the case of ***State of Rajasthan v. Parmanand*** reported in **(2014) 5 SCC 345** and Hon'ble Three Bench of Hon'ble Supreme Court in the case of ***S.K.Raju @ Abdul Haque @ Jagga V. State of West Bengal*** reported in **2019 (1) SCC (CRI) 371**. The
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Hon'ble Two Judges Bench of Supreme Court in the case of “*Ranjan*

Kumar Chadha Versus State of Himachal Pradesh reported in 2023

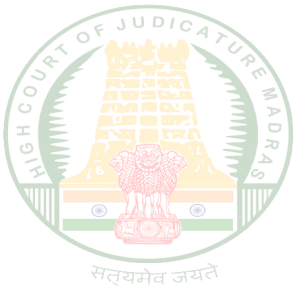
SCC Online SC 1262” made a detailed discussion upon referring various

decisions and formulated guidelines with regard to the circumstances

under which section 50 of the NDPS has no application.

17.5. From the consideration of the above precedents, the following principles have evolved:-

17.5.1. Before deciding the issue of compliance of requirement of section 50 of NDPS Act, the court should ascertain whether the recovery of the contraband is from the “*body of the person*”. If contraband is recovered from the body of the person, strict compliance of section 50 of NDPS Act is necessary. If the contraband was recovered from the “*accused’s suitcase, premises of accused, vehicle of accused, bag or any other conveyance*”, strict compliance of Section 50 of the Act is not required. Therefore, in the cases where the contraband is recovered from the “*accused’s suitcase, accused premises, accused vehicle, accused bag, any other conveyance*”, the plea of the accused to acquit them for non compliance of the section 50 of NDPS Act is misconceived and the same cannot be accepted.



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*“i) In cases involving number of accused, the prosecution had produced evidence to prove the compliance of the section 50 of NDPS Act by giving oral communication in unequivocal terms and the case of the accused that they had been deprived of their right under section 50 of NDPS Act in view of the joint consent letter cannot be accepted for the reason that the Hon’ble Constitution Bench in “Baldev Singh”, “Pawan Kumar” “Vijaysingh Chandubha Jadeja” and latest detailed judgment of the Hon’ble Supreme Court in “Ranjan Kumar Chadha” has held that **there is no requirement of compliance of section 50 of NDPS Act only through writing and also permissible to convey the right orally.***

(ii) In the cases where contraband was recovered from accused's suitcase, accused's premisses, accused's vehicle, accused's bag, and other conveyance, there is no necessity to comply the requirement of section 50 of NDPS Act. “

17.5.2. In this case, the recovery was made only from the bag carried by the appellant and hence there was no need to comply the requirement of section 50 of NDPS Act. Even otherwise, on facts, the searching officer and the other members of the team clearly deposed about the oral communication about the right of option of the accused to be searched under section 50 of the NDPS Act. There is no infirmity in their evidence about the oral communication. Even though the subsequent written communication following the oral information has

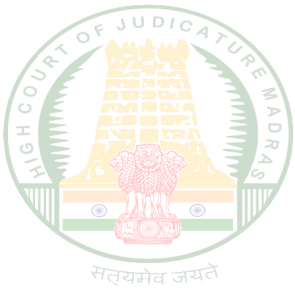
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some defect, this court is satisfied with the compliance of the section 50 of the NDPS Act through oral communication. The said part of the evidence is in accordance with the direction given by the Hon'ble Two constitution bench of Supreme Court in the case of "*Baldev Singh*", "*Vijaysingh Chandubha Jadeja*" and the material portion of the judgment is as follows :-

Baldev Singh	Vijaysingh Chandubha Jadeja
The question whether or not the safeguards provided in section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of section 50 and particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial.	We are of the opinion that the concept of "substantial compliance" with the requirement of section 50 of the NDPS Act introduced and read into the mandate of the said section in <i>Joseph Fernandez</i> and <i>Prabha Shankar Dubey</i> is neither borne out from the language of sub section (1) of section 50 nor it is in consonance with the dictum laid down in <i>Baladev Singh case</i> . Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formulate in that behalf.



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17.5.3. Therefore, in each case it is duty of the court, firstly to ascertain the application of section 50 of NDPS Act and if the recovery was made from other than the body of the person, then section 50 has no application. The following is the table showing recovery in each case:-

Sl. No.	Case Number	Recovered from	No. of Kgs
1.	Crl.A.(MD).No.172 of 2023	Gunny bag in his head	24 kg
2.	Crl.A.(MD).No. 212 of 2020	One gunny bag in his shoulder	21 kg
3.	Crl.A.(MD).No. 293 of 2021	White colour fertiliser sack on his head	22 kg
4.	Crl.A.(MD).No. 331 of 2023	White color plastic gunny bag	22kg
5.	Crl.A.(MD).No.396,397,399 & 400 of 2023	Two travel bags and one gunny bag	30kg
6.	Crl.A.(MD).No. 507 of 2023 Crl.A.(MD).No. 94 of 2024	Car via gunny bag	24kg
7.	Crl.A.(MD).No. 534 of 2022	Two travel bags on head	22kg
8.	Crl.A.(MD).No. 551 of 2023	100 plastic bags, two gunny bags	22kg
9.	Crl.A.(MD).No. 588 of 2023	Ganja in a gunny bag at Pandikovil, Vallinagar, Allinagaram, Theni District.	21kg
10.	Crl.A.(MD).No. 724 of 2023,	White coloured bag in the backside seat of the Auto	21kg
11.	Crl.A.(MD).No.773 & 953 of 2023 and 265 of 2024	Two white coloured fertiliser sacks in the dicky of the TATA Indica car bearing Reg.No.TN-60-E-2841	23kg
12.	Crl.A.(MD).No.322 of 2023	White colour plastic Gunny Bag	25kg
13.	Crl.A(MD) No. 269 & 558 of 2023	Sack in an auto bearing Registration No.TN 58 W 5600	25 kg

17.6. In all cases recovery of the alleged contraband were made from the bag either carried or found in the vehicle and in no case



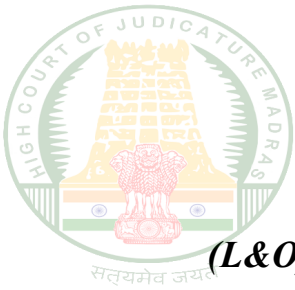
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recovery was made from the body of the person and hence, in all case there was no requirement to follow the mandate of Section 50. Further, the witnesses also deposed about the compliance of Section 50 in cogent manner. Therefore, this Court inclines to hold that there was no necessity to follow the mandate of Section 50 and finds no infirmity in the finding of the learned Trial Judge about the compliance of Section 50 on the basis of the cogent evidence of the search officer in each case corroborated by material documents.

17.7 Therefore, the contention of the learned counsel for the appellants to acquit the appellant for non-compliance of section 50 of NDPS Act deserves to be rejected.

18. Discussion on the presence of the crime number either in the sample or arrest memo before registration of the case:

The learned counsel for the appellants would submit that the mentioning of the crime number in the recovery mahazar, arrest memo and label of the sample creates suspicion about the recovery of the contraband in the occurrence place and they produced the judgment of this court in *Thangapandi and others Vs. The Inspector of Police*

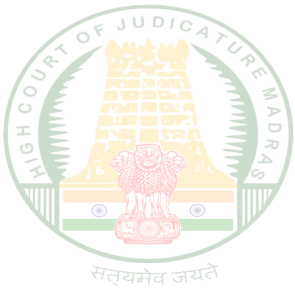


(L&O) reported in *AIR OnLine 2018 MAD 1132*.

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18.2. The learned Additional Public Prosecutor would submit that the most of the recovery was made on the basis of the receipt of the secret information. Therefore, the searching officer had knowledge about the last crime number of the particular police station. Further, on the label it is necessary to mention the crime number so as to make the proper identification of the said materials that they belonged to the said case. Therefore, the criminal rules of practice demands the mentioning of the crime number on the label of the material object. Hence, mentioning of the crime number can not be treated as a circumstance to treat the recovery with suspicions eye. He also relied the judgment of the same learned judge in the different cases with finding that mentioning of the crime number need not necessarily affect the testimony of the recovery witness.

18.3. This court considered the said submission of the both learned counsel for the appellants and learned Additional Public Prosecutor and also the relevant precedent on the said aspect.



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18.4. As per the criminal rules of practice framed by the Hon'ble High Court, Madras, it is duty of the Investigating Agency to affix the crime number on the material object in order to keep safe custody of the property in the property room of the trial court and also for proper identification of the material object that it belonged to the corresponding crime number. The labelling of the crime number on the material object might have been written subsequently at the time of the remand of the accused. Further, in most of the cases, the search was made on the basis of prior information received as per section 42 of the NDPS Act. Since, the team had proceeded to the spot on the basis of recording of the information either in the General Diary or sending information through telephone to the higher officers or after reducing the said information in writing, they would know the last crime number of the particular station. Even in the case of the recovery under section 43 of the NDPS act or chance recovery, due to the advantage of the telecommunication facilities, the chance of getting the last crime number of the station is possible one. Therefore, without proper cross examination in the above aspect and in the absence of the supporting material for the manipulation of the records, the contention of the learned counsel for the appellant that



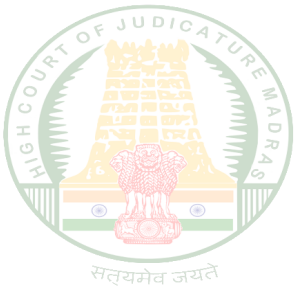
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the mentioning of crime number created suspicion relating to the recovery of the contraband in the occurrence place, is nothing but myth.

Further, it is true that the learned judge of this court in the judgment in the case of *Thangapandi and others Vs. The Inspector of Police (L&O)* reported in *AIR OnLine 2018 MAD 1132*. has held that the mentioning of the crime number in the arrest memo, recovery mahazar, label of the material object created doubt considering the other material circumstances of the said case in the process of the recovery of the contraband. But, the learned judge in the subsequent decision based on the earlier decision of the Hon'ble Judge of this court has held that the same cannot be used to suspect the recovery of the contraband.

18.5. Therefore, this court is duty bound to consider both the appeal judgments relied by the learned counsel for the appellants and the argument of the learned additional public prosecutor and the other precedents of the various high court and the Hon'ble Supreme Court.

18.5.1. In the case of *Radhey Sham v. State of Haryana*, reported in *(2001) 10 SCC 206* a similar contention was raised before the Hon'ble Supreme Court and the relevant paragraphs are as follows:-



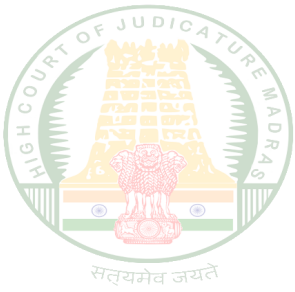
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“6. Learned counsel for the appellant further submitted that FIR number is mentioned on the recovery memo and therefore it is apparent that FIR was first registered and thereafter the recovery memo was prepared. He has also submitted that sealing of the article seized was also not proper. No independent witness was examined nor was the accused having any injury even though the van turned turtle. In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR.

7. Lastly, learned counsel appearing for the appellant submitted that in view of the evidence of defence witness the Court ought to have considered that as there was some altercation between Pawan Kumar and SI Baljit Singh, the accused has been falsely implicated in the crime. In our view, if there was any altercation or dispute between Pawan Kumar and SI Baljit Singh, there was no reason for the prosecution to involve the appellant. If they wanted falsely to involve Pawan Kumar, who is the owner of the van, they could have done so easily because from the van owned by him 8 bags containing 320 kg of chura-post (poppy husk) were found. Further, it is to be stated that the accused in his statement under Section 313 CrPC has stated that he was falsely implicated at the behest of Head Constable Om Prakash. As against this, witness Pawan Kumar has stated that there was dispute with Baljit Singh. In this view of the matter, no credence can be given to the defence.

8. In the result, we hold that there is no substance in the appeal. It is, therefore, dismissed.”



WEB COPY 18.5.2. The single bench of this Court in ***Crl.A.No.210 of 2011***

wherein the Hon'ble Judge has held in the relevant paragraph as follows:-

“9. Regarding the presence of crime number on the label, it is not a ground to doubt the recovery. It may only add suspicion if not properly explained or there is no plausible reasons inferable through the evidence. Normally, no Court will accept the property to its custody without proper identification and case details. This precaution is in consonance to the Criminal Rules of Practice so as to avoid difficulty in tracing the property in the property room. Therefore, the presence of crime number in the property cannot be suspected merely because label with crime number was affixed prior to registering the case. The crime number might have written subsequently or obtained in advance from the station immediately after the seizure since, the team had proceeded to the spot based on specific information and the Station House Officer been reported about the information as per Section 42(2) of the NDPS Act, before proceeding to the spot. That is why in Rangan case, the Court has precisely extracted what, Vasudevan (PW.2), has deposed and proceeded further and stated as follows:

“வழக்கு சொத்தில் உள்ள விபர லேபிள் சம்பவ இடத்தில் வைத்து தயார் செய்து ஒட்டப்பட்டது என்றால் சரி அந்த விபர லேபிளில் குற்ற எண் மற்றும் என்.டி.பி.எஸ் சட்டப்பிரிவுகள் குறிப்பிடப்படவுள்ளன என்றால் சரி. நிலையம் வந்த பிறகு தான் முதல் தகவலறிக்கை பதிவு செய்யப்பட்டது என்றால் சரி. விபர லேபிளில் குற்ற எண் மற்றும் என்.டி.பி.எஸ் சட்டப்பிரிவுகள் குறிப்பிடப்பட்டதால் காவல்



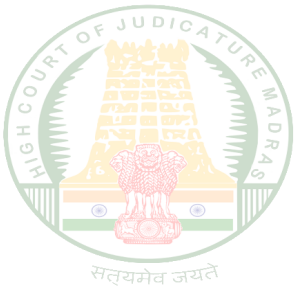
நிலையத்திற்கு வந்து மின்னிட்கு தயார் செய்யப்பட்டவை என்றால் சரியல்ல.”

Vasudevan [P.W.2] has clearly admitted that the labels were affixed on the contraband at the place of seizure and he has also admitted that he has given the crime number on the labels. He has also admitted that the FIR [Ex.P.8] was registered only subsequently and he has not given any plausible explanation in his evidence, thereby making the very recovery doubtful, the benefit of which should go to the accused.

10. To make it more clear, this Court add the plausible explanation need not necessarily be in the testimony but it can be also inferred from the other evidences before the Court. In this case, the accused has affixed her LTI in the recovery mahazar. She has also affixed her LTI in the property labels. The properties were sent to the Magistrate under Form 95 (Ex.P.7) on 22.10.2004, the same day of recovery. Therefore mere presence of crime number on the label affixed prior to registering F.I.R is ipso facto will not render the recovery doubtful.”

18.5.3. A similar contention was raised before this Court (Hon'ble Mr.JUSTICE P.VELMURUGAN) in ***S.A.Bakrudeen Vs. The Inspector of Police, NIB CID Chennai in Crl.A.No.395 of 2012*** wherein the Hon'ble Judge has held in the relevant paragraph as follows:-

“Normally in NDPS cases the seizure officer after



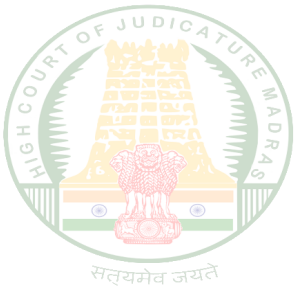
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getting permission from the superior officer only he would proceed to occurrence place, some time he would note down the next crime number of the police station. Therefore, mere mentioning the crime number in the arrest memo, search and recovery mahazar will not affect the case of the prosecution.”

18.5.4. A similar contention was raised before this Court (The Hon'ble Dr.Justice G.JEYACHANDRAN) in ***Sekar @ City Sekar Vs. Inspector of Police, NIB CID in Criminal Appeal No.425 of 2012*** wherein the Hon'ble Judge has held in the relevant paragraph as follows:-

“9. Regarding mentioning of crime number in the arrest memo, PW.2 Mr.Annakamu was unable to give satisfactory explanation. Similarly, when wife of the accused was informed and from where she was informed through telegram about the arrest of accused is also not properly explained. However, this discrepancy in the arrest memo at the most, they make the arrest illegal but not the seizure. Insofar as seizure is concerned, the sequence of event has spoken by prosecution witness is that on 16.02.2006 at about 11.30 hours, PW.2 has received the information and placed the information to his superior PW.4 Mr.V.Ashok Kumar, at about 11.45 hours and thereafter, they have proceeded to the spot. The informant has identified the accused at around 13.30 hours which was followed by seizure proceedings. The accused and the seized contraband has been produced before the Magistrate on the



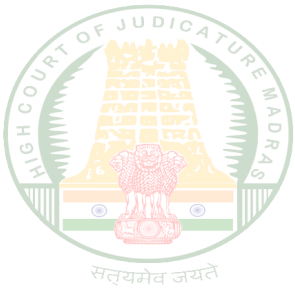
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same day of seizure and arrest. For producing the contraband before the Regular Court, 20 days delay is admitted. However, on the day of arrest itself, the contraband has been produced before the Judicial Magistrate. The sample received by the chemical examiner for analysis was found intact with seal. Therefore, there is no scope to suspect any manipulation. When the possession of contraband not been explained by the accused, the overall evidence let in by the prosecution, prove the charge of illegal possession of Ganja by the accused. Therefore, this Court finds no error in the finding of the trial Court.”

18.5.5. This Court in the case of ***Kannan Vs. State represented by the Inspector of Police*** reported in ***AIR OnLine 2019 MAD 402***, has held as follows:-

“20. Not only in this case, in many other cases also, this defence is taken by the counsels representing the accused person. This Court, earlier held in few cases that it is highly improbable of mentioning the crime number in the sample whereas, in the contraband or any other document which were supposed to be prepared prior to registration of F.I.R. Since, in normal practice, crime number is assigned only at the time of registering the F.I.R. However, it is explained by the learned Government Advocate (crl.side) that when a special wing like NIBCID, where the operations are only based on prior intelligence and on information, frequent registration of F.I.R., is very rare. Unless and until there is some chance recovery.



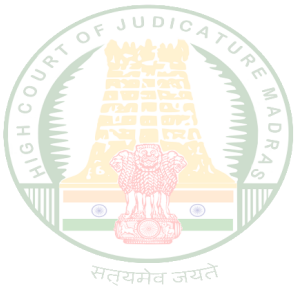
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Even in those circumstances, when a team of Police proceeds towards spot based on specific information, or otherwise, it is natural that they will know the last crime number registered in their Station. It is also possible for the Police immediately after seizure to ascertain the crime number over phone from the Station. In some cases, the witnesses are able to explain how the crime number finds place even in the documents which are supposed to have been prepared prior to the registration of the case. In some cases, they omit to explain. In any event, the mentioning of the crime number in contraband and other documents is for the sake of identification. At times, the crime number would have been written subsequently also. The failure on the part of the prosecution witness to explain per se will not render the seizure illegal or vitiate the prosecution. The Court has to look into overall evidence collected by the prosecution and the proof of the same and 'whether any prejudice caused to the accused otherwise.'

18.5.6. The similar contention was raised before the Hon'ble Supreme Court in ***Parveen Kumar v. State of Delhi*** reported in **2013 SCC Online 2019** and the observation in the relevant paragraphs is as follows:-

“11. In the context of the fact that Column no. 11 in the FIR mentioned the words “PM conducted”, Ms. Kapoor contended that the words “to be” between the words “PM” and “conducted” appear to have been skipped. The FIR was



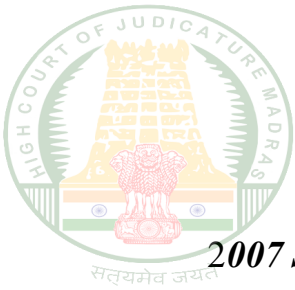
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recorded at 2.25 a.m. on 7.5.2000 and the postmortem was conducted at 12.30 p.m. on the same day and this is borne out by the aforesaid two documents. Merely because the words “Postmortem conducted” appear in the FIR, the contents of the FIR will not be rendered false. It is trite that any act of omission or commission or an irregular act of the Investigating Officer cannot result in throwing out the entire case of the Prosecution, more so as the contents of the rukka and the FIR are identical and both the said documents bespeak of the presence of the eye witness at the time of the incident. Learned APP contended that in any event the aforesaid submission of the defence deserved no consideration for a similar plea made before the Hon'ble Supreme Court in the case of Radhey Sham v. State of Haryana, (2001) 10 SCC 206 was not countenanced by the Supreme Court. In the said case, it was submitted on behalf of the Appellant that since the FIR number was mentioned on the Recovery Memo, therefore, it was apparent that the FIR was first registered and thereafter the Recovery Memo was prepared. Rejecting this contention, the Supreme Court opined:

—
“In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR.”

18.5.7. A similar contention was raised before the High Court of Punjab and Haryana in ***Mohan Singh Vs. State of Punjab*** reported in

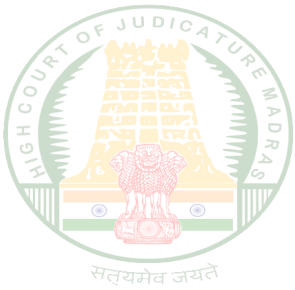


2007 SCC OnLine P&H 95. The relevant paragraph is as follows:-

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“11. Counsel for the accused-appellants has next argued that after effecting recovery of the contraband vide recovery memo Ex.PG, Ruqa Ex.PH was sent to the police station for registration of the case and in the meantime, PW-2 Inspector Chuhar Singh prepared the rough site plan Ex.PK and Jama-talasi Memos., Ex. PL, PM and PN and all the said exhibits, namely, Exhibits PG, PK, PL, PM and PN contain FIR numbers and it gives an inference that the FIR was registered prior to the alleged recovery, which creates doubt about the veracity of the prosecution. The contention is again meritless in view of the dicta of the Hon'ble Supreme Court in Radhey Shyam v. State of Haryana, (2001) 10 SCC 206, wherein similar argument was advanced and it was held that the same would not vitiate recording of the FIR and the conviction of the accused. Apart from this, a bare perusal of the memos. Exhibits PG, PK. PL, PM and PN reveals that FIR number was initially not filled appearing against those columns and the space was left blank and that FIR number was subsequently added after coming to know of the FIR number, which if seen with a naked eye, is with a different ink. Therefore, the defence cannot derive any benefit from the same.”

18.5.8. A similar contention was raised before the Hon'ble Supreme Court in **Naushad & Ors. Vs. State (NCT of Delhi)** reported in **2009 SCC OnLine Del 3520**. The relevant paragraph is as follows:-



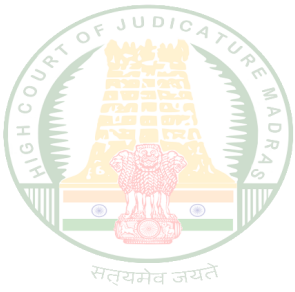
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“47. As regards the submission that the number of FIR registered in the present case is mentioned in the seizure memo Ex.PW-26/C, suffice would it be to state that the investigating officer Inspector Harshvardhan PW-26, has not been cross-examined with respect to said aspect of the matter. No suggestion was given to the investigating officer that seizure memo Ex.PW-26/C was prepared only after the registration of the FIR and for that reason, the number of the FIR came to be mentioned on the top of the seizure memo. Possibility cannot be ruled out that the investigating officer mentioned the number of the FIR on the seizure memo, after the receipt of the formal FIR from the police station. Having given no opportunity to the investigating officer to explain the circumstance pertaining to mentioning of the number of the FIR in the seizure memo Ex.PW-26/C no adverse inference can be taken against the prosecution. In taking the said view, we are supported by the decisions of Supreme Court reported as *Rahim Khan v. Khurshid Ahmad* AIR 1975 SC 290, *State of UP v. Anil Singh* 1988 (Supp) SCC 686 and *Sunil Kumar v. State of Rajasthan* (2005) 9 SCC 298.

48. In said regards, it is also relevant to note the decision of Supreme Court reported as *Radhey Shyam v. State of Haryana* (2001) 10 SCC 206 wherein it was observed as under:-

“Learned counsel for the appellant further submitted that FIR number is mentioned on the recovery memo and therefore it is apparent that FIR was first registered and thereafter the recovery memo was prepared. He has also submitted that sealing of the article seized was also not proper. No



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independent witness was examined nor was the accused having any injury even though the van turned turtle. In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR....” (Emphasis Supplied)

49. Therefore, in view of the above discussion, it cannot be held that the seizure memo Ex.PW-26/C is a manipulated or fabricated document and that the prosecution case is false.” As the Bible says “If the salt has lost its flavour, wherewith shall it be salted?”, or as the ancient Romans used to say, “Who will guard the Praetorian guards?”

18.6. From the above reading of the precedents and also the observation of the Hon’ble Supreme Court, it is seen that the mentioning of the crime number cannot be considered as an isolated circumstance to disbelieve the evidence of the recovery witnesses.

19.Discussion on the non-examination of the independent witness:

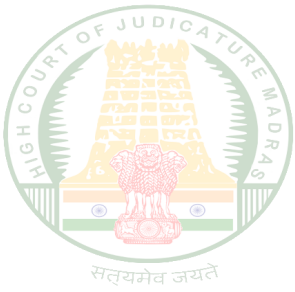
19.1. The Hon'ble Supreme Court in the case of ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)*** reported in ***(2020) 10 SCC 120***, reiterated the principles that the non-examination of the independent



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witnesses could not be a ground to disbelieve the evidence of the police officers when the same was cogent and trustworthy. The relevant portion of the judgment is extracted hereunder:

“11. Now so far as the submission on behalf of the accused that so far as the NDPS Act is concerned, it carries a reverse burden of proof under Sections 35 and 54 and therefore if the informant who himself has seized the offending material from the accused and he himself thereafter investigates the case, there shall be all possibilities of apprehension in the mind of the accused that there shall not be fair investigation and that the officer concerned shall try to prove his own version/seizure and therefore there shall be denial of the “fair investigation” enshrined under Article 21 of the Constitution of India is concerned, it is required to be noted that whether the investigation conducted by the informant concerned was fair investigation or not is always to be decided at the time of trial. The informant/investigator concerned will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police witnesses. As held by this Court in a catena of decisions, the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses his testimony cannot be relied upon. [See Karamjit Singh v. State (NCT of Delhi) [Karamjit



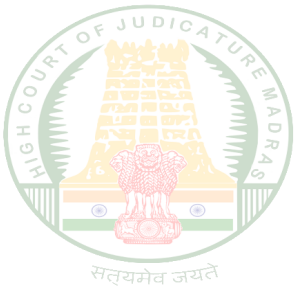
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Singh v. State (NCT of Delhi), (2003) 5 SCC 291 : 2003 SCC (Cri) 1001] .] As observed and held by this Court in Devender Pal Singh v. State (NCT of Delhi) [Devender Pal Singh v. State (NCT of Delhi), (2002) 5 SCC 234 : 2002 SCC (Cri) 978] , the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.

11.1. At this stage, reference may be made to Illustration (e) to Section 114 of the Evidence Act. As per the said provision, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. Therefore, merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be left to be decided on a case-to-case basis without any universal generalisation.

11.2. At this stage, it is required to be noted that in cases where any person empowered under Sections 42, 43 or 44 of the NDPS Act acts vexatiously or maliciously, the statute itself has provided the punishment as per Section 58 and it is an offence under Section 58 which is a cognizable offence and such an offence is required to be investigated by the “officer in charge of a police station” other than the officer who exercised the power of entry, search, seizure or arrest under Sections 42, 43, or 44 as naturally in such a case he would be a proposed accused and



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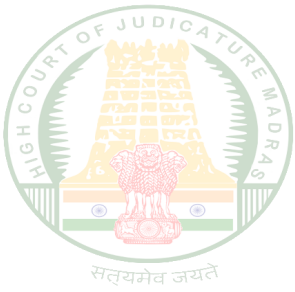


therefore he cannot be permitted to investigate and to be a judge in his own cause. However, so far as the investigation against the accused for the offence under the NDPS Act is concerned, the same analogy may not apply for the reasons stated hereinabove.

11.3. Now so far as the observations made by this Court in para 13 in Mohan Lal [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the Act is against the accused as per Sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. At this stage, it is required to be noted that the reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention of Corruption Act, but is also a part of the IPC — Section 304-B and all such offences under the Penal Code are to be investigated in accordance with the provisions of CrPC and consequently the informant can himself investigate the said offences under Section 157 CrPC.”

19.2. The Hon'ble three judges bench in the case of ***Union of India vs. Bal Mukund and others*** reported in (2009) 12 SCC 161 has held that:

“28. Where a statute confers such drastic powers and



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seeks to deprive a citizen its liberty for not less than ten years, and making stringent provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon.”

19.3. By applying the principle laid down in the above case this court proceeds to discuss about the non-examination of independent witness in each appeal:

19.3.1 Discussion on the non-examination of the independent witness in Crl.A.(MD).No. 172 of 2023:

In this case, P.W.1 and P.W.2 clearly deposed about the recovery and the arrest of the accused and so also the property was also produced before the Court without any delay.

19.3.2 Discussion on the non-examination of the independent witness in Crl.A.(MD).No. 551 of 2023:

In this case, P.W.1 and P.W.2 clearly deposed about the recovery of the contraband from the appellants' custody. The recovered contraband, Form-91 and the relevant document namely, athatchi and the report under Section 57 of the Act reached the trial Court without any delay along



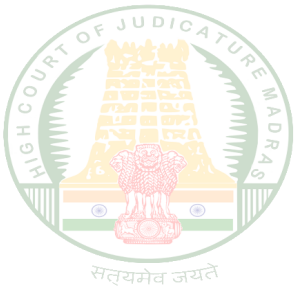
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with the remand requisition of the accused. Therefore, the non-examination of the independent witness is immaterial and the same is not a ground to disbelieve the cogent and trustworthy evidence of P.W.1 and P.W.2.

19.3.3 Discussion on the non-examination of the independent witness in Crl.A.(MD).No. 588 of 2023:

In this case, P.W.1 and P.W.2 clearly deposed about the recovery of the contraband from the appellants' custody. The recovered contraband, Form-91 and the relevant document namely, athatchi and the report under Section 57 of the Act reached the trial Court without any delay along with the remand requisition of the accused. Therefore, the non-examination of the independent witness is immaterial and the same is not a ground to disbelieve the cogent and trustworthy evidence of P.W.1 and P.W.2. In this case, this Court finds no infirmity in the evidence of P.W.1 and P.W.2 and the other evidence which corroborated with the contemporaneous document namely, Ex.P.10, recovery mahazar.

19.3.4 Discussion on the non-examination of the independent witness in Crl.A.(MD).No. 773, 953 of 2023 and 265 of 2024:



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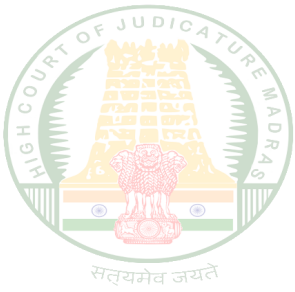
In this case, P.W.1 and P.W.2 clearly deposed about the recovery of the contraband from the appellants' custody. The recovered contraband, Form-91 and the relevant document namely, athatchi and the report under Section 57 of the Act were reached the trial Court without any delay along with the remand requisition of the accused. Therefore, the non-examination of the independent witness is immaterial and the same is not a ground to disbelieve the cogent and trustworthy evidence of P.W.1 and P.W.2.

19.4. Therefore, the non-examination of the independent witness is immaterial and the same is not a ground to disbelieve the cogent and trustworthy evidence of the other witness.

20. Discussion on delay in producing the contraband before the Special Court and delay in sending sample to the lab:

20.1. The Hon'ble Supreme Court in *Hardip Singh Vs. State of Punjab* reported in (2008) 8 SCC 557 has held as follows:-

“it was of No consequence, for the fact of the recovery of the said sample from the possession of the appellant had been proved and established by cogent and reliable evidence and that apart, it had also come in evidence that til the date of



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parcels samples, were received by the chemical examiner, the seal put on that parcel was intact..... The plea that there was 40 days delay was immaterial and would not dent of prosecution case.”

20.2. In ***State of Rajasthan Vs. Sahiram*** reported in (2019) 10

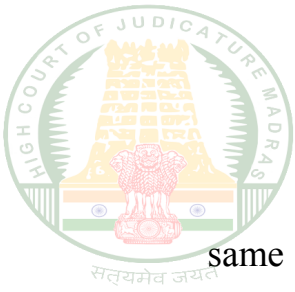
SCC 649 the Hon'ble Supreme Court has held as follows:-

“If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that the report of the forensic experts shows the potency nature and quality of the contraband material and that based on such material the essential ingredients constituting an offence are made out.”

20.3 By applying the above principle, this Court proceeds to discuss about the delay in sending sample on the facts of the each appeal:

20.3.1 Discussion on delay in producing the contraband before the Special Court and delay in sending sample to the lab in CrI.A. (MD).No. 212 of 2020:

The recovery was made on 08.12.2021 and the same was produced before the learned Judicial Magistrate along with the remand report. The



same was produced before the FSL Lab on 23.12.2021 without any tampering of seal and there was no question about the tempering of seal.

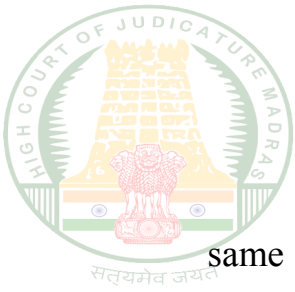
Therefore, the said submission of the learned counsel for the appellants can not be accepted to disbelieve the recovery made from the appellants.

20.3.2 Discussion on delay in producing the contraband before the Special Court and delay in sending sample to the lab in Crl.A. (MD).No. 293 of 2021:

The contraband was recovered on 05.06.2019. The sample was taken on the same day itself and the same was produced before the learned Judicial Magistrate on 05.06.2019 and sent to the lab on 11.06.2019. In the Chemical Analysis Report, it is specifically stated that seal was intact. Therefore, the argument of the learned counsel for the appellant that there is delay in producing the contraband before the FSL lab cannot be accepted.

20.3.3 Discussion on delay in producing the contraband before the Special Court and delay in sending sample to the lab in Crl.A. (MD).No. 588 of 2023:

The recovery was made on 08.12.2021 and the same was produced before the learned Judicial Magistrate along with the remand report. The



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same was produced before the FSL Lab on 23.12.2021 without any tampering of seal and there was no question about the tempering of seal also. Therefore, the said submission of the learned counsel for the appellants can not be accepted to disbelieve the recovery made from the appellants.

Therefore, the said submission of the learned counsel for the appellants that there is delay in producing the contraband can not be accepted to disbelieve the recovery made from the appellants.

20.4 Discussion on the complaine of Section 52 A of the NDPS

Act:

The learned counsel for the appellants submitted that there is no compliance of 52(A) of the NDPS Act. In this case, all the recovered contraband apart from the samples taken from each bag were sent to the Court along with the accused at the time of remand. The learned Judicial Magistrate perused the same and directed to produce the same before the said Special Court. Before the Special Court, during the course of trial, the remaining contraband was marked as material object and the samples were also marked. The searching officer and other officer clearly deposed about the recovered contraband and identified before the Court. A similar



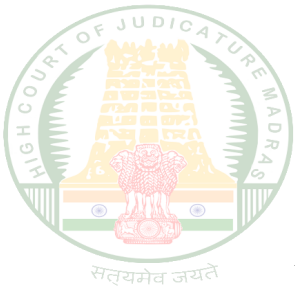
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contention was raised before this Court in some other case and this court made a detailed discussion in the case of ***Mareeswaran vs. The Inspector of Police*** reported in **2023 (2) L.W. CrI. 893** held that non-compliance of the section 52A of NDPS Act is not a circumstance to disbelieve the prosecution case of recovery said of contraband and there is no impediment to convict the said appellants.

20.4.2. Now the Hon'ble Supreme Court clearly laid down the law on this aspect in the following two cases:

20.4.2.1. ***Narcotics Control Bureau v. Kashif***, reported in **2024 (11) SCC 372** (Paragraph Nos. 41, 42, 46, 47, 50.4)

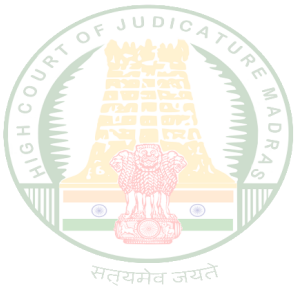
“41. From the above decisions, the position that emerges is that this Court in a catena of decisions, has approved the procedure of spot searches and seizures in compliance, with the Standing Orders and the notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of FSL reports, etc. Even otherwise, in view of the law laid down by the Constitution Benches in Pooran Mal [Pooran Mal v. Director of Inspection Investigation), (1974) 1 SCC 345 : (1974) 93 ITR 505] and in



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Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080] , any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the officer concerned authorised in making application to the Magistrate as contemplated under Section 52-A of the Act.

42. Significantly, the authorised officer can make the application under sub-section (2) of Section 52-A for three purposes - (a) for certifying the correctness of the inventory prepared by him; or (b) taking in presence of such Magistrate, photographs of the seized drugs, substances and conveyances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate, and certifying the correctness of any list of samples so drawn. The use of the conjunction "OR" made in between the three purposes mentioned therein, itself makes it explicitly clear that the purposes for which the application could be made under sub-section (2) are

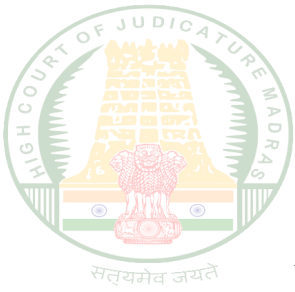


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alternative and not cumulative in nature. Such provision specifying multiple alternative purposes could not be construed as a mandatory provision much less its non-compliance fatal to the case of prosecution.

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.

47. Therefore, we have considered the legislative history of Section 52-A and other statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or noncompliance with Section 52-A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in Pooran



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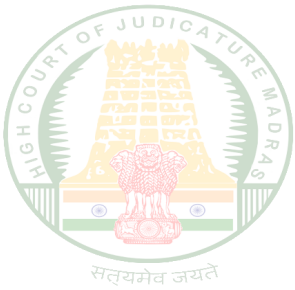
Mal [Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345 : (1974) 93 ITR 505] and Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] must take precedence over any observations made in the judgments made by the Benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.

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.”

20.4.2.2. In the case of ***Bharat Aambale v. State of Chhattisgarh*** reported in **2025 SCC online SC 110** para 50 as follows:

“50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories,



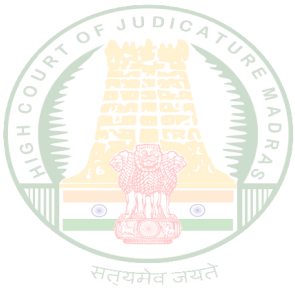
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taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order (s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.



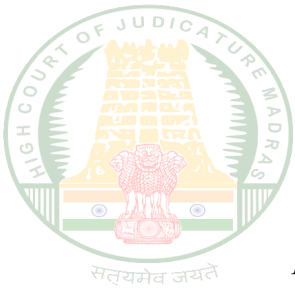
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(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it . will not be appropriate for the court to resort to the statutory



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presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate noncompliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (i) satisfy the . court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

20.4.3. In this case, the prosecution clearly proved the entire recovery of contraband from the accused, and the same was also produced before the Court. When the appellants could not establish that such non-compliance under Section 52A of the Act, has vitiated the trial



then such plea cannot be accepted. By applying the above principles, the argument of the learned counsel for the appellants that the appellants are entitled to acquittal on the account of non-compliance under Section 52(A) of the Act, deserves to be rejected.

21. Discussion in the maintainability of conviction under section 8(c) r/w 20(b)(ii)(C) after acquittal under Section 25 & 29 (1) of the Act:-

21.1. As per Section 20(b)(ii)(C) of the Act, if any person 'possesses' 'transports' 'uses cannabis' above the commercial quantity, they are liable to be convicted under Section 8(C) r/w 20(b) (ii)(C) of the NDPS Act. 20(b)(ii)(C) of the NDPS Act, is an independent provision. Provision under Section 25 of the NDPS Act, is a different one. To sustain the conviction under Section 25 of the NDPS Act, the prosecution shall prove any of the following facts:-

- i) The accused is the owner of the property*
- ii) Either the vehicle or the place is in the occupation of the accused.*
- iii) The accused is having control over the vehicle or place.*

21.2. But, to sustain the conviction under Section 20(b)(ii)(C) of

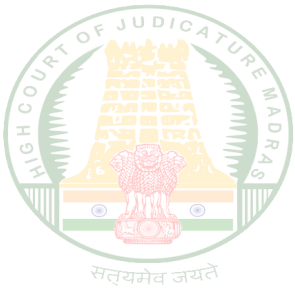


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the NDPS Act, it is not necessary to prove the above ingredients. To sustain a conviction under Section 20(b)(ii)(C) of the NDPS Act, only requirement is either to prove the possession of the contraband in the car or transportation of the said contraband in the car. In this case, evidence of P.W.1 and P.W.2 clearly proved that the appellants were travelling in the car along with the contraband. When the evidence of the prosecution witnesses P.W.1 and P.W.2 are cogent and trustworthy about the recovery of contraband in the car and when there is no explanation under Section 313 Cr.P.C., this Court concurs the finding of the learned trial Judge that the appellants are liable to be convicted under Section 8(C) r/w 20(b)(ii)(C) of the Act. Therefore, the acquittal under Sections 25 and 29(1) of the NDPS Act ipso fact, is not a bar to convict the appellants under Section 8(c) r/w 20(b)(ii)(C) of the Act.

23. Discussion on the maintainability of the conviction in all cases under Section Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act without proof of recovered contraband with flowering or fruiting tops:

23.1. In the case of *Union of India v. Bal Mukund* reported in **(2009) 12 SCC 161**, the Hon'ble Supreme Court has held as follows:



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“28. Where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years, and making stringent provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon. While considering a case of the present nature where two persons may barely read and write Hindi, are said to have been used as carrier containing material of only 1.68% of narcotics, a conviction, in our opinion, should not be based merely on the basis of a statement made under Section 67 of the Act without any independent corroboration particularly in view of the fact that such statements have been retracted.”

23.2. Submission of the Appellant's counsel:

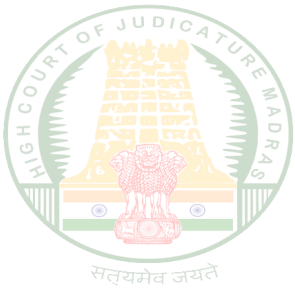
23.2.1. In all cases, as per the prosecution, the recovered quantity is, between, 20 kg and 25 kg of ganja. According to the counsel, as per the definition 2(iii) (b) of the NDPS Act, ganja means '*the flowering or the fruiting tops of the cannabis plant excluding the leaves and seeds when not accompanied with tops*'. They would also read through the evidence of witnesses and documents and state that in all these cases, the recovery of contraband did not contain flowering or fruiting tops of the cannabis plant. Once the recovered ganja did not contain the flowering or fruiting tops as per Section 2(b) of the NDPS Act , they are not liable to



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be prosecuted under any of the provision NDPS Act. Hence, if the recovered contraband has only seeds and other parts of ganja without flowering or fruiting tops, the appellant cannot be convicted under the NDPS Act for possession of the Ganja as per the definition of 2(b) of the NDPS Act and hence they seek for acquittal.

23.2.2 Further, some of the Learned counsels argued that the police team weighed the entire contraband along with gunny bag, leaves and seeds without weighing the weight of the bag, leaves and seeds separately. In any event due to the mentioning of the “*cannabinod*” without any reference to *THC (tetrahydrocannabinol)* in the chemical analysis report and without any clarity that the recovered contraband contained the flowering or fruiting tops and when it contained only leaves, seeds and stalks, the case of the appellant would come only under the category of below commercial quantity. In view of such ambiguity, conviction under Section 8(C) r/w 20(b)(ii)(C) of the NDPS Act is not legally maintainable. Therefore, they seek to alter the conviction under Section 8(C) r/w 20(b)(ii)(B) of the NDPS Act and reduce the sentence proportionately.



23.3. Submission of the learned Additional public prosecutor:

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23.3.1. It is true that the recovered contraband was including leaves and seeds and it is also a factual aspect and the same was not raised before court below and hence When the Chemical Analysis Report specifically mentioned the presence of *CANNABINOID*, the contention of the learned counsel for the appellant that the same was not recovered with flowering or fruiting tops and hence, the case does not come under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act, can not be accepted.

23.3.2. The learned Additional Public Prosecutor would place strong reliance on “Hira Singh case” and submit that the weight of the entire contraband has to be taken into consideration and more particularly in view of the judgment of the Hon'ble Supreme Court reported in **2009 (2) SCC 26** and the judgment of this Court in ***Crl.OP(MD)No.18999 of 2024***, the entire contraband should be taken into consideration .and hence, appellant is liable to be convicted for possession of commercial quantity. .

23.3.3. The Learned Additional Public Prosecutor on the basis of the following specific observation in the chemical analysis report would



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contend that “கதிர்கள்” means flowering or fruiting tops and hence the

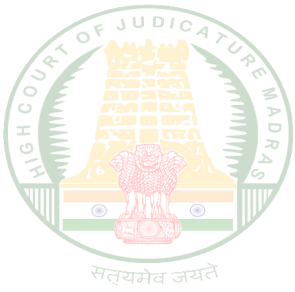
contraband would squarely come under the definition of Ganja:

உலர்ந்த நிலையில், பசுமை கலந்த பளுப்பு நிறமுள்ள
சிறு இலைகளுடன் கூடிய கதிர்கள், விதைகள் மற்றும்
நொறுங்கிய இலைகளுடன் கூடிய பொருளின் நிகர எடை 22 கிராம்.

23.4. Reply argument by learned counsel for appellants:

23.4.1. The Learned Counsels appearing for the appellants by way of reply would contend that literal meaning of “கதிர்கள்” is not flowering or fruiting tops. All over India, convictions are recorded either for possession or illicit trafficking of Ganja without proper understanding of the true meaning of Ganja as per section 2(b) of the Act and number of persons are confined in prison without bail from the date of the arrest. Therefore, the Learned Counsels for the appellants would submit that atleast in the border line cases of weighing upto 25 kgs, the conviction may be converted U/s.20(b)(ii)(B) of the NDPS Act.

23.4.2. To consider the submission of the learned counsels appearing for all the accused, this Court is duty bound to consider the taxonomy and pharmacology of Hemp and trace the history relating to the penal provision of “*hemp cultivation*”.

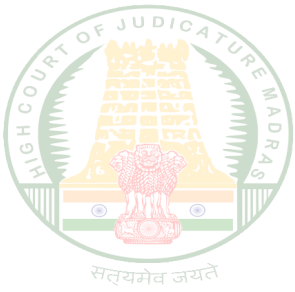


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23.5. Taxonomy and Pharmacology of Hemp:

23.5.1. The Laboratory and scientific section United Nations Office on Drugs and Crime (UNODC), Vienna issued manual to deal with the identification and analysis of Cannabis and Cannabis products in the year 1987, 2009, 2022 under the name of ***“Recommended methods for the Identification and Analysis of Cannabis and Cannabis products”***. The said UNODC is adopted as *a manual for use by the National Drug analysis Laboratories of India*. The said UNODC manual outlines the taxonomy and pharmacology of Hemp.

23.5.2. The genera cannabis and Humulus (hops) belong to the same family of Cannabaceae, which also includes eight other genera. Cannabis is mainly associated with three species *of flowering plants* belonging to the ***canabenaceae*** family, namely *sativa*, *indica*, and *ruberalis*. The plants are indigenous to Central Asia and the Indian subcontinent, where their earliest use dates back to at least the third century BC. It has a rich history spanning thousands of years and varying representations throughout human civilization. *Cannabis sativa* or *indica* is known as ***“Indian Hemp”*** and it is an annual flowering herb.



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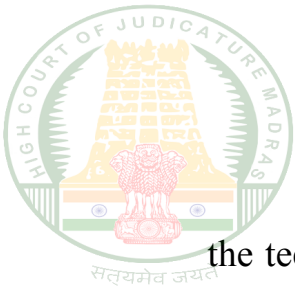
23.5.3. As in the case of every plant, the cannabis plant contains both vegetative and flowering shoot. Female plants are very leafy up to the top, whereas male plants have the leaves on the inflorescence fewer and much further apart. Vegetative shoot contains stem, stalk, compound leaves. Flowering shoot contains with inflorescence with little leaves otherwise called petals (vegetative tops), fruit and seeds.

23.5.3.1. The **flowers** are very abundant and they are either male (staminate) or female (pistillate). Mostly *cannabis sativa* is dioecious plant but there are monoecious also. It is relevant to explain the meaning of monoecious and dioecious:-

Monoecious	Dioecious
Having male and female reproductive organs in the same individual having staminate and pistillate flowers on the same plant	Having male reproductive organs in one individual and female in another
In any larger field of cannabis plants, a number will be monoecious, that is bearing both male and female flowers	Having staminate and pistillate flowers borne on different individuals

23.5.3.2 The **Compound leaves** vary in size according to the overall size of the plant. Each leaf has a slender stalk up to 6 cm in length. Three to eleven (mostly five, seven, nine) thin and soft-textured leaflets are coarsely saw-toothed edge and a long drawn-out pointed tip:

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the teeth are sharp and point towards the tip of the leaflet; the veins run out obliquely from the midrib to the tips of the teeth. The leaflets of a single leaf are uneven in size, the largest being up to 15 cm. They are covered with glandular hairs (trichomes) on the upper surface, more profuse and longer hairs on the underside.

23.5.3.3 The *male inflorescence* is loosely arranged, much branched and many flowered, standing out from the leaves, with individual flowering branches up to 18 cm long: it is covered by minute bristly hairs.

23.5.3.4 The *female inflorescence* do not project beyond the leaves: they are compact, short and contain fewer flowers. The bract or calyx completely covers the ovary, and forms a basally swollen tabular sheath about 2 mm long, out of which two stigmas project. This sheath is covered with slender hairs and short-stalked or stalkless circular glands. The diagram of the plant has also been incorporated in the said manual and for the discussion of the case, it is relevant to imprint the diagram:



- | | |
|-------------------------|--------------------|
| 1. flowering shoot | 5. female flower |
| 2. male inflorescence | 6. fruit |
| 3. male flower | 7. seed |
| 4. female inflorescence | 8. compound leaves |



- | | |
|--|---|
| A. Inflorescence of male (staminate) plant | 7. Pistillate flower showing ovary (longitudinal section) |
| B. Fruiting female (pistillate) plant | 8. Seed (achene*) with bract |
| 1. Staminate flower | 9. Seed without bract |
| 2. Stamen (anther and short filament) | 10. Seed (side view) |
| 3. Stamen | 11. Seed (cross section) |
| 4. Pollen grains | 12. Seed (longitudinal section) |
| 5. Pistillate flower with bract | 13. Seed without pericarp (peeled) |
| 6. Pistillate flower without bract | |

23.6. Pharmacology of Hemp:

In India, cannabis is commonly known to have three distinct derivatives; a) ganja (marijuana), the dried flower buds or fruits of the female cannabis plant, b) charas (hashish), the resinous exudation secreted by the plant, and c) bhang, a grinded paste of only the matured leaves. The more prevalent term 'marijuana' typically refers to the dried leaves, stems, and flowering buds of the two more commonly consumed strains of sativa and indica.

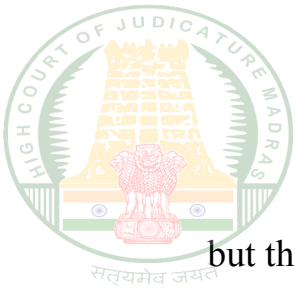
23.6.2. The Cannabis plant contains significant quantity of said psychoactive constituents only in the fruiting and flowering tops and small leaves situated immediately above the floral structure of the fruits



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called as *vegetative tops*. They are called as *drug-containing parts*. The lower part of the plants also have luxuriant growth of leaves which differ, and are distinguished from *Flowering Shoot*. They are called as *non-drug-containing parts*.

23.6.3. A few active components of cannabis, namely delta-9-tetrahydrocannabinol (THC), cannabinal (CBN), and cannabidiol (CBD), have been found to produce its intoxicating effects, which include feelings of euphoria, altered perception, relaxation, and well being. Cannabinal (CBN), and cannabidiol (CBD) are not treated as offending substance. only delta-9-tetrahydrocannabinol (THC) is treated as most offending psychotropic substance and the same **is present all over the parts of the hemp, namely, root, stem, stalks, leaves, pistillate flowers i.e both drug-containing parts and non-drug-containing parts. But significant quantity of Psychoactive constituent THC is present only in the fruiting and flowering tops and leaves next to the flowering tops.** Also the leaves next to the male flowering tops of potent cannabis plants contain consumable amounts of THC. However, the content is much lower than that of female plants and they are therefore not material of first choice. The central stem and main side stems contain little THC



but they may still be used in the production of cannabis oil.

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23.6.4. The “*Laboratory and Scientific Section United Nations Office on Drugs and Crime (UNODC), Vienna*” revised and updated the methods of analysis for cannabis and cannabis products in the name of “***Recommended methods for the identification and analysis of cannabis and cannabis products***”. The same was used by our laboratory as a “***Manual for use by National Drug analysis Laboratories***”. The said manual delineates that the THC content varies depending on the plant part:

10-12 per cent in pistillate flowers

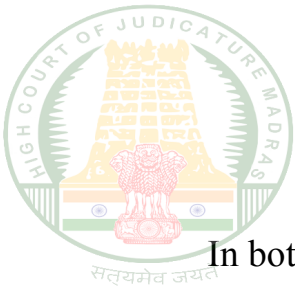
1-2 per cent in leaves

0.1-0.3 per cent in stalks

< 0.03 per cent in the roots.

23.6.5. The fruiting tops alone contain the seeds. Fruiting tops are the parts of the female cannabis. When the flowering tops become fruits, and the seeds, the THC level gets substantially reduced in the seeds. Therefore, Fluorescences of flower is a material part of ganja which comes under its definition. Marijuana is the base for both ganja and bang.

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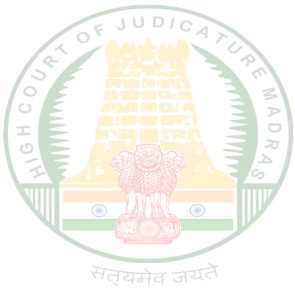


In both, Tetrahydrocannabinol (THC) is present.

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23.6.6. Usage of bhang with the limit of 15% of THC is not an offence. But in the case of Ganja it is about 25% of THC, and it is an offence. *Concentrated Psychoactive constituent* is present only in the fruiting or flowering tops. The small leaves (petal) next to the flowering tops contain significant quantity of psychoactive constituent THC and they are known as drug containing parts. The bigger leaves, namely, the luxuriant leaves located at greater distance from the flowering tops also have THC, but they are not treated as the psychoactive constituent. Similarly, the male flowers contain moderately less THC than the female plants. Central stem, main stem contain little THC and they are used for the preparation of the bhang. Remaining part also contains THC, but they are used for the preparation of the various fiber or the oil, herbal materials.

23.6.7. ***The House of Lords*** also has dealt the taxonomy of the cannabis plant and pharmacology of the cannabis in the decision reported in the case of ***Directorate of Prosecution (Respondent) and Goodchild (Appellant)*** reported in ***1978 (1) WLR 578*** and held as follows:



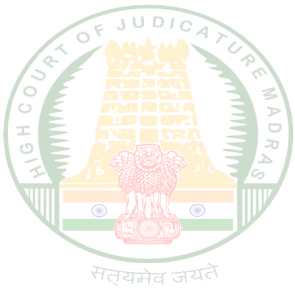
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“The plant contains hallucinogenic Ingredients, of which the chemical names are cannabinol and other substances of closely related molecular structure known to chemists as cannabinol derivatives. Of these one of the most potent and Important is the tetrahydro derivative of cannabinol known familiarly as T.H.C.”

5.1. Cannabis sativa is an annual. It grows to a height of 4 feet to 16 feet and flowers and fruits in October to November. The floral structure is formed at the top of the stems and is associated with a mass of small leaves known as vegetative tops. The lower parts of the plant also have a luxuriant growth of leaves which differ, and are to be distinguished, from the vegetative tops. The hallucinogenic Ingredients are found in the resin of the plant. These are secreted in the hairs of trichomes on the leaves and on the flowering and fruiting tops. They are present in increasingly greater concentration as one moves from bottom to top of the plant. There is very little in the stem itself or in the ripe seeds. The concentration in the flowers is about two-and-a-half times, and in the vegetative tops is about twice, the concentration in the lower leaves. The resin can be extracted from the plant by brushing it off the leaves and flowers. The hallucinogenic Ingredients, cannabinol, T.H.C. can then be extracted from the resin.

5.2. The narcotic effect of the cannabis plant when subjected to no other treatment except drying thus varies with the portion of the plant that is used. The resin when separated from the plant contains a higher concentration of narcotic than the plant itself, while the highest narcotic content is to be found in cannabinol and cannabinol derivatives after they have been extracted from the resin.”



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23.6.8. From the reading of the various provisions of the Act, and the precedents of various Courts and House of lords and the guidelines issued by the Union Government as to how the chemical analysis has to be conducted on the basis of UNODC guidelines and various articles and the toxicology books and Indian Hemp Drugs Commission Report 1894, this Court opines that cannabis plant contains various parts and the same is divisible into drug containing parts and non-drug containing parts. Even in the drug containing parts, the ratio of psychoactive constituent varies. More than 550 number of chemicals are present in the cannabis and cumulatively called as “cannabinoid”. As per the pharmacology, *cannabinoid* mainly contains THC (Tetrahydrocannabinol), CBD (Cannabinoidal), CBN (Cannabinal). As already observed, the fruiting and flowering tops and leaves next to the flowering tops (either called as small leaves or petal or *vegetative tops*) contain the significant amount of THC and they are called as the drug containing parts of the cannabis plant. Remaining parts even though having negligible amount of THC, they are not brought under the control of the Act. Bhang one of the offending materials with negligible amount of THC, which was in the earlier Abkari Act and Dangerous drugs Act, is omitted by government in the present NDPS Act. This would show that Bhang is out of the purview



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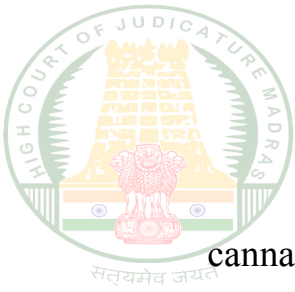
of the Act. With the first hand of Pharmacology of Hemp, this court delves into the History of the Penal provision of “Hemp Cultivation”

23.7. The History of the Penal provision of “Hemp Cultivation”:

23.7.1. Cannabis has a chequered history in India, one that has spanned thousands of years, and is associated with multiple connotations as medicine, divine herb, cash crop, and a drug of recreation or abuse. Only in the recent part of its Indian history cannabis was banned, and its use and prevalence grew exponentially, and now it is on the verge of being legalized again.

23.7.2. Cannabis Sativa or Indica is known as *Indian Hemp*. In India, the indigenous distinction between marijuana, bhang, and hashish have existed for centuries, and the three derivatives have considerable differences in concentrations of THC, CBD, and other components. So far as hemp is concerned, it is always treated as a multi purpose plant and also used as the medical drug from time immemorial. During the British period in the year 1894 a Indian Hemp Drugs Commission was appointed and in its more than 1372 pages report with heavy documentation of evidence and testimonies recommended against the prohibition of the

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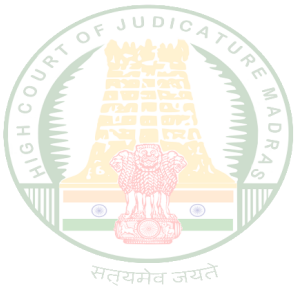
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cannabis due to its extensive use in several parts of India even for religious purposes it was concluded with the following note:

“Total prohibition of the cultivation of the hemp plant for narcotics, and of the manufacture sale or use of the drugs derived from it is neither necessary nor expedient in consideration of their ascertained effects, of the prevalence of the habit of using them, of the social and religious feeling on the subject, and of the possibility of its driving the consumers to have recourse to other stimulants or narcotics which may be more deleterious”

23.7.3. In the said report in paragraph No.151, the commission imported the definition of Ganja from famous Botanist *Dr.Prain* and the same was as follows:-

Ganja	Ganja consists of the dried flowering tops of cultivated female hemp plants which have become coated with resin in consequence of having been unable to set seeds freely.
Charas	Charas is the name applied to the resinous matter which forms the active principle when collected separately
Siddhi	Siddhi, bhang, subzi, or patti are different names applied to the dry leaves of the hemp plant, whether male or female, and whether cultivated or uncultivated.



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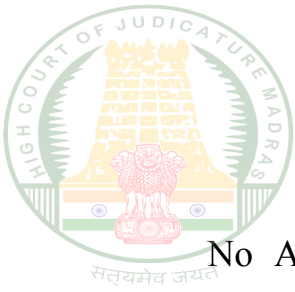
“152. Over nearly the whole of India distinction is recognised between the Ganjas may be got from the wet ganja and the bhang plant. Though the natives may well as the cultivated plant mistake the sexes, it is clear that the female plant is the one which is called ganja and the male plant bhang. The plants are distinguishable even in the wild state, the loose flowering panicle of the male from the comparatively stiff and apparently blossomless spike of the female. The hill ganja of Assam, and the wild ganja that seems to be occasionally found and used throughout Eastern Bengal and the Sub-Himalayan region, and even in Kashmir; must be the female flower spike which has often been quite innocent of any tending. In examining the evidence, therefore, the definition of ganja given above must often be read as with the word cultivated omitted.

153. Then as regards bhang, the witnesses often use the word to include The drug bhang often consist of the female flower head as well as the leaves of the ganja. plant, and the green leaves as well as the dry. The male flower head must also enter into it in consequence of the crude method of preparing the drug, vis., by drying the plants and beating out the leaves. But the male flowers are not more narcotic than the leaves; the point to be noted is the inclusion of the female flower head in bhang. The confusion arises from the name of the product bhang being used also for the liquid form in which the hemp drugs are consumed. Ganja pounded up and made into drink becomes bhang.”

23.7.4 Therefore, during the British period, the Opium Act, 1878

alone was brought to control the possession and circulation of Opium.

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No Act was in force to prohibit the use of cannabis. Some state enactment like “The Madras Abkari Act, 1886, The Bombay Abkari Act, 1878” were operated with penal provision for possession of the Ganja as **“Intoxicating Drugs”** in excess of the quantity prescribed by the Government and importing and exporting intoxicating drugs without licence an offence. During the British period the regulation was available only for the purpose of the collection of revenue by imposing tax on the cultivation of the hemp. Subsequently, similar penal provisions as intoxicating drugs were incorporated in various Excise Act in many other states and in the Central Excise Act.

23.7.5 Thereafter, most of the states dealt with the Intoxicating Drugs under the various Excise Act namely Bengal Excise Act, 1909, The United Provinces Excise Act, 1910, The Punjab Excise act, 1914, The Burma Excise act, 1917, The East Bengal and Assam Excise Act, 1910, The Bihar and Orissa Excise Act, 1915. Apart from that Central Provinces Excise Act, 1915 also was in force.

23.7.6 Maximum 6 months punishment was provided with. Subsequently, on the basis of the Geneva convention relating to



dangerous drugs held on 27.09.1923, 17.09.1924 and 19.02.1925 and the state being signatory to the said convention British Government brought

Dangerous Drugs Act, 1930 with the following preamble:

“An Act to centralise and vest in the Governor General in Council the control over certain operations relating to dangerous drugs and to increase and render uniform throughout British India the penalties for offences relating to such operations.

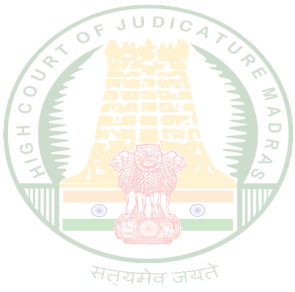
WHEREAS India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations dated the 27th day of September, 1923, met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention);

AND WHEREAS India was a State signatory to the said Geneva Convention ;

AND WHEREAS the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such asures being more particularly set forth in the Articles of the said Geneva Convention ;

AND' WHEREAS for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralised and vested in the Governor General in Council;

AND WHEREAS it is also expedient that the penalties for certain



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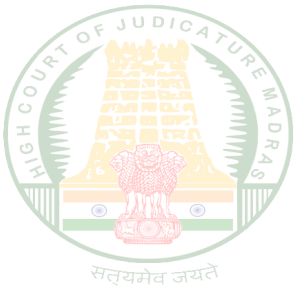


offences relating to Dangerous drug should be increased, and that all penalties relating to certain operations should be rendered uniform throughout British India; “

23.7.7 Even the promulgated Dangerous Drugs Act, 1930 provided for statutory control over opium and not on the use of the cannabis. In the said drugs Act also there was no stringent punishment relating to the cultivation, dealing the hemp import and export and trans shipment. The Act provided only two years imprisonment either with or without fine. After the Dangerous Drugs Act, 1930 number of states brought Prohibition Act. The Prohibition Act dealt with both Intoxicating Liquor and Intoxicating Drugs.

23.8. Thereafter, taking note of many deficiencies in the existing laws and considering the drug abuse at the national and international level and also to implement the covenants of International convention on Narcotic Drugs and Psychotropic Substances, on 16.09.1985 the existing “Narcotic Drugs and Psychotropic Substances Act, 1985” was introduced with the following statement of objects and reasons:

“The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The principal



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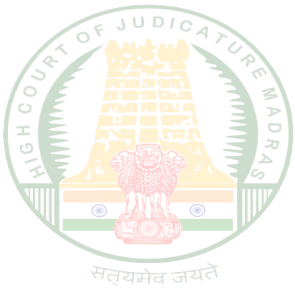
Central Drugs Acts, namely, the Opium Act, 1987, the Opium Act, 1978 and the Dangerous Drugs Act, 1930 were enacted a long time ago. With the passage of the time and the developments in the field of illicit drug traffic and drug abuse at national and international level, many deficiencies in the existing laws have come to notice, some of which are indicated below:-

(i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of 3 years with or without fine and 4 years imprisonment with or without fine for repeat offences. Further, no minimum punishment is prescribed in the Courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighboring countries and destined mainly to Western countries.

(ii). The existing Central laws do not provide for investing the officers of a number of important Central enforcement agencies like narcotics, customs, central excise, etc., with the power of investigation of offences under the said laws.

(iii) Since the enactment of the aforesaid three central Act a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these treatise and conventions which entail several obligations which are not covered or are only partly covered by the present Acts.

(iv) During recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and poses serious problems to national Governments.



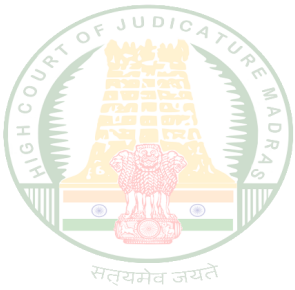
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There is no comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the convention on Psychotropic Substances, 1971 to which India also has acceded.

2. In view of what has been stated above, there is an urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances which, inter alia, should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuse, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and Psychotropic substances to which India has become a party.”

23.8.1 Further various amendments were brought in the year 1989, 2001, 2014 to further strengthen the Act with stringent provisions. As per the NDPS Act, 1985 grave punishment was provided with reverse burden of proof by dividing the quantity of the contraband namely Narcotic Drugs and Narcotic Substances into three categories namely *Commercial, Below Commercial and small quantity* with following punishment:

“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any



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provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or
(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

shall be punishable,—

[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

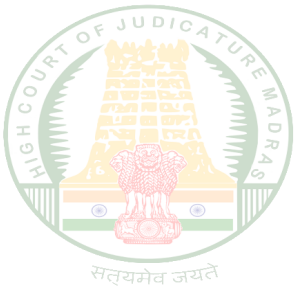
(ii) where such contravention relates to sub-clause (b),—

*(A) and involves **small quantity**, with rigorous imprisonment for a term which may extend to 2 [one year], or with fine which may extend to ten thousand rupees, or with both;*

*(B) and involves quantity **lesser than commercial quantity** but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;*

*(C) and involves **commercial quantity**, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:*

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]



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23.8.2. The Act deals separately with specific definitions for Narcotic Drugs, Narcotic Substances, Controlled Substances. The Drugs include both “Synthetic” and “Natural Drugs”. Similarly, Narcotic substances also includes both.

23.8.3. Prior to the NDPS Act, Abkari Act and Dangerous Drugs Act were in the field. Intoxicating drugs defined in the Abkari Act and Dangerous Drugs Act included the leaves, small stalks, flower or fruiting tops of the Individual hemp Plant, including all forms known as charas or ganja. For brevity and better understanding, it is relevant to extract both definitions of Intoxicating drugs and Cannabis Hemp.

Intoxicating drug	Cannabis Hemp
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'intoxicating drug' means-

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as bhang, siddhi, or ganja ;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport ;

(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom.

(iii) "cannabis (hemp)" means—

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) "cannabis plant" means any plant of the genus cannabis;

23.8.4 After the introduction of NDPS Act, the legislature considering the grave punishment, confined the definition of the cannabis(hemp) only to the parts of the genus of cannabis plant. According to the definition of the *cannabis hemp* under the NDPS Act, *cannabis plant*, *Ganja*, *Charas* are specifically defined. Charas is a resin whether in the form of crude or purified, obtained from the cannabis plant and includes the concentrated preparation and the resin is known as hashish oil or liquid hashish. The Ganja has been defined as flowering or fruiting tops of the cannabis plant. Cannabis plant is defined as any plant

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of the genus of the cannabis. The mixture means with or without neutral material of the above forms of cannabis or any drink prepared therefrom.

The cumulative reading of the definitions shows that only flowering or fruiting top of the cannabis plant without the seeds and leaves is treated as Ganja. In the case of possession and trafficking of ganja, there is a total exclusion of any other parts of the cannabis plant other than the flowering or fruiting top and, seeds and leaves would be included only when accompanied with the flowering or fruiting tops.

23.8.5. The legislature also introduced the notification with contents of the chemical name and small, below commercial and commercial quantity.

23.8.6 In the table specified in the notification issued by the Central Government in exercise of the powers conferred by section 2 clauses (viia) and (xxiia) of the Act, serial number 23 defines **cannabis and cannabis resin** and the non-proprietary name was described *as Charas and Hashish and name of chemical extract is extracts and tinctures of cannabis*, whereas in the serial number 55, Ganja is



mentioned without any non-proprietary name and chemical name.

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The Chemical name mentioned as per the NDPS Act, are as follows:

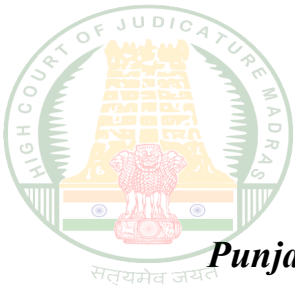
Sl. No	Name of Narcotic Drugs and Psychotropic Substances (International non-proprietary name (INN))	Other non-proprietary name	Chemical name	Small Quantity (in gm.)	Commercial Quantity (in gm./kg.)
23.	Cannabis and Cannabis resin	Charas, Hashis	Extracts and Tinctures of Cannabis	100	1 kg
55.	Ganja			1000	20 kg

List of Psychotropic Substances as per the schedule under the ACT:

Sl. No	International non-proprietary name	Other non-proprietary name	Chemical name
13.	Tetrahydrocannabinol, the following isomers and their stereo	THC	(6a-R, 10aR)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-penty 611-dibenzo [b-d] pyran-OI

23.9. Principles to interpret the provisions of NDPS Act, 1985:

To give proper meaning to *ganja*, this court has deeply went through various Hon'ble the Supreme Court judgments including The Hon'ble Constitution Bench of the Supreme Court in cases of *State of*



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Punjab vs Baldev Singh reported in (1999) 6 SCC 172, ***Vijaysingh***

Chandubha Jadeja v. State of Gujarat reported in (2011) 1 SCC 609,

Mukesh Singh vs. State reported in (2020) 10 SCC 120 and ***Karnail***

Singh Vs. State of Haryana reported in (2009) 8 SCC 539 and various

three Judges Bench of the Hon'ble Supreme Court and two Judges Bench

of the Hon'ble Supreme Court and finds that the following principles

have been reiterated by Hon'ble Supreme Court to interpret the provision

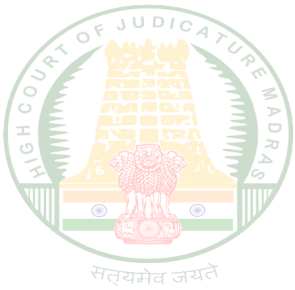
of the NDPS Act, 1985:

“(i) Drug abuse is a social malady. to arrest the drug menace, when the NDPS Act, provides harsh punishment with certain safeguard to check the misuse of power, to avoid harm to the innocent persons and to minimise the allegation of planting of foisting of false cases by the law enforcement agencies. Therefore, triangular interest of society, accused and the prosecution has to be considered.

(ii) The principle of purposive interpretation, strict interpretation and natural interpretation is applicable to the interpretation of the provision of this Act.

(iii) Conducting fair investigation in the case of the NDPS offence and a fair trial for those accused of a offence under the NDPS Act is constitutional right of the accused.

(iv) Both prosecution and investigating agency cannot be permitted to take advantage of their own wrong which would cause serious prejudice to the accused facing the trial of heinous provision of the NDPS Act.



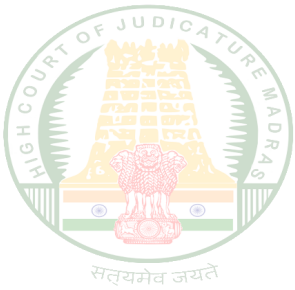
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(v) *Operation of the presumption clause under Sections 35, 54 of the Act commence only upon the proof of the foundational facts beyond reasonable doubt.*”

23.9.1. Apart from that, this court also considered then existed provision of England 's, *“The Misuse of Drugs Act 1971 which had similar provisions to deal quantity based punishments describing A,B,C CATEGORIES i.e. maximum of seven years Imprisonment for a Class A drug, five years for a Class B drug, and two years for a Class C drug”*.

23.9.2.A similar question arose before the House of Lords as to maintainability of conviction under “class A” without exclusion of seeds and leaves and the House of Lords in the case of Directorate of Prosecution (Respondent) and Goodchild (Appellant) reported in **1978 (1) WLR 578**, has discussed taxonomy and pharmacology of cannabis and held as follows:-

“The Misuse of Drugs Act 1971 specifies in Schedule 2 what are the controlled drugs dealt with by the Act and allots them to three classes, A, B, and C. By section 5, it is an offence for a person to have a controlled drug in his possession. (This is subject to some exceptions that do not affect the instant case.) By section 25 and Schedule 4 the maximum penalty on prosecution



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on indictment for having possession of a controlled drug is progressive, according to the class of drug involved. It is a maximum of seven years Imprisonment for a Class A drug, five years for a Class B drug, and two years for a Class C drug.”

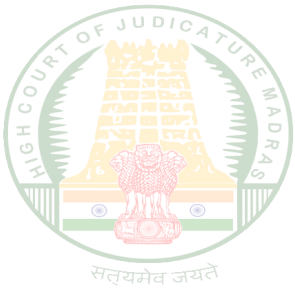
Cannabis and cannabis resin are defined respectively in section 37 as follows:

"Cannabis' (except in the expression 'cannabis resin') means the flowering or fruiting tops of any plant of the genus Cannabis from which the resin has not been extracted, by whatever name they may be designated. 'Cannabis resin' means the separated resin, whether crude or purified, obtained from any plant of the genus Cannabis."

They are included as Items in the list of Class B drugs, but "Cannabinol, except where contained in cannabis or cannabis resin Classan items in Class A; so is "Cannabinol derivatives, an expression which is defined in Part IV of Schedule 2 as meaning "the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl hornologues of cannabinol or of its tetrahydro derivatives."

Following upon the lists of controlled drugs specified by name in each of the three classes are additional paragraphs designed to incorporate in the class closely related chemical analogues of the listed drugs, such as stereoisomers, esters, ethers and salts. In addition there is a paragraph which incorporates within the relevant class "any preparation or other product containing a substance or product for the time being specified in [the list of drugs] above."

At the first trial of the appellant in the Crown Court in



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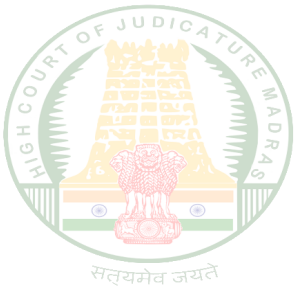


June 1976, the expert scientific evidence was given in the form of written statements. It was common ground that it was not proved that any part of the leaf and stalk of the cannabis plant that had been found in his possession consisted of flowering or fruiting tops, but that it was proved, though by qualitative analysis only, that some T.H.C. was present in the specimen that had been subjected to analysis. Upon this evidence the judge ruled that the material found in the appellant's possession was cannabis. The judge also ruled that the appellant had in his possession a cannabinol derivative, T.H.C., since this had been identified as a constituent of that material; but that the appellant was not in possession of any cannabis resin.

In consequence of those rulings, the appellant pleaded guilty to the count of unlawful possession of the controlled Class B drug, "cannabis. He pleaded not guilty to the count of being in unlawful possession of the Class A drug "a cannabinol derivative." This count was left upon the file; and the appellant was sentenced to a fine of £100 or six months' Imprisonment in default of payment on the count of unlawful possession of "cannabis."

*His appeal to the Court of Appeal against his conviction on this count was allowed on December 10, 1976, on the ground that **the statutory definition of cannabis is restricted to the flowering or fruiting tops of the plant, and that leaf and stalk alone, in the absence of any such flowering or fruiting tops, does not fall within the definition.** This was, in my view, obviously right. No argument to the contrary has been advanced before your Lordships' House.*

The appellant underwent a second trial upon the count



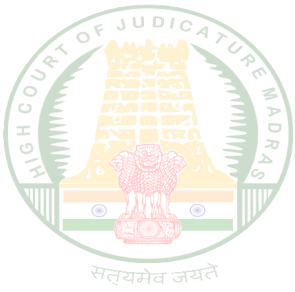
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remaining on the file which charged him with unlawful possession of "a cannabinol derivative." This was held in the Crown Court on March 3, 1977, and was presided over by a different judge. He too ruled that possession of leaf and stalk of the cannabis plant which proved on analysis to contain traces of T.H.C. amounted to possession of "a cannabinol derivative" within the meaning of section 5 of and Schedule 2 to the Act. Faced by this ruling the appellant once more changed his plea to guilty and was sentenced to a fine of £25. Once more too he appealed to the Court of Appeal who upheld the Judge's ruling and certified that a point of law of general public Importance was involved in the decision, namely:

"Whether on the true construction of the Misuse of Drugs Act 1971 a person in possession of some leaves and stalk only from a plant or plants of the genus cannabis may thereby be in possession of a cannabinol derivative naturally contained in those leaves, in contravention of section 5 (1) of that Act."

My Lords, the Misuse of Drugs Act 1971 is a criminal statute. It makes it an offence to be in possession of any of a long list of drugs and makes the gravity of the offence depend upon the class of listed drug into which the particular substance in his possession falls. Most, though not all, of the listed drugs in the three Classes A, B and C are described by their precise chemical name and are synthetic substances which do not occur in the natural state. In the case of these drugs there is no room for doubt or ambiguity. A substance either is the described synthetic drug (or a preparation or other product containing the described synthetic drug) or it is not. But there are some listed drugs which, although they can be synthesised, also occur in the natural state



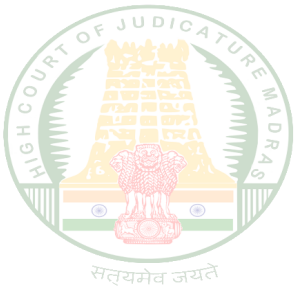
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in plants, fungi or animals, and these include some of the most used narcotic drugs.

It would not in my view be a natural use of language to say, for instance, that a person was in possession of morphine when what he really had was opium poppy straw from which whatever morphine content there might be in it had not yet been separated; nor do I think it would be apt use of language to describe the poppy straw as a "preparation or other product containing morphine, since this expression is inappropriate to something that is found in nature as distinct from something that is manmade. Regarded simply from the point of view of language the matter is in my view put beyond doubt as respects the specific narcotic Ingredients found in opium poppies by the inclusion in the list as separate Items "opium" and "poppy straw" as well as morphine, thebaine, codeine and several other specified alkaloids which are or may be constituents of opium and of poppy straw. A similar Indication of the meaning of references in the Schedule to specific drugs by their scientific names is to be found in the inclusion as separate items of "cocaine" itself and "coca leaf" which contains cocaine and from which cocaine can be extracted. I should conclude, therefore, that prima facie a reference in Schedule 2 to a specific drug by its scientific name does not include a reference to any naturally occurring substance of which the specific drug is a constituent but from which it has not yet been separated.

So prima facie one would not suppose that possession of naturally occurring leaf and stalk of the plant cannabis sativa of which a cannabinol derivative, T.H.C., was an unseparated constituent could be charged under the Act as possession of a "cannabinol derivative."



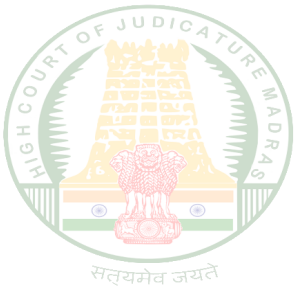
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The argument to the contrary depends upon the presence of the words of exception which I have Italicised in the description of cannabinol in the list of Class A drugs and In the definition of cannabinol derivatives In Part IV of Schedule 2. These, It is suggested, give rise to an inference that but for the exception, cannabinol and cannabinol derivatives notwithstanding that they were contained in the natural substances cannabis or cannabis resin would have fallen within the definition; and that, accordingly possession of cannabinol and cannabinol derivatives in however small a quantity if contained in any naturally occurring material other than one falling within the statutory definition of cannabis or cannabis resin would constitute the offence of possession of a Class A drug under the Act.

My Lords, such inference as to the ambit of enacting words that can be derived from the presence of a proviso or the exception is notoriously a weak one, since the proviso or exception may have been Inserted per majorem cautelam. In any event it must give way whenever the consequences of applying it would be irrational or unjust. In the instant case the consequence, at the time that the appellant was prosecuted, would have been that he would be liable to be convicted of the more serious offence of unlawful possession of a Class A drug, whereas if what he had had in his possession had Included part of the flowering or fruiting tops of the cannabis plant and so contained a greater concentration of cannabinol derivatives, he could only have been convicted of the lesser offence of possession of a Class B drug, to wit cannabis Itself.

I would construe the Act in such a way as to avoid this irrational and unjust result. A man should not be gaoled upon an



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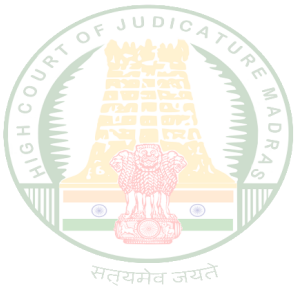
ambiguity. I would allow the appeal and quash the conviction of the appellant for the offence of unlawful possession of a cannbinol derivative. The House of Lords also discussed the same in the case of”

23.10 With the above laid guidance and principles, now this court ventures into the discussion on the Definition of Ganja:

23.10.1 In view of the stringent punishment without bail in the case of the commercial quantity under the NDPS Act, it is the duty of the Courts to see every proof of the ingredients of the provision of the NDPS Act. Therefore, vociferous submission of the Learned Counsel for the accused about the ongoing conviction for possession of the “Ganja” without satisfying whether the seized contraband would come under the definition of “Ganja” has to be looked into.

23.10.2 **Andrew Ashworth**, in his writing “*Positive Obligations in the Criminal Law*” has felt the same in the following words;

“My reasoning has been essentially normative, rather than descriptive or historical. At its core is the notion of fairness, and its connection with censure-based and rule of law values. I have argued that it is unfair, in a political system to convict people of serious crimes without proof of fault as to all the material



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elements of the offence. This goes against basic notions of personal autonomy; and it is even more destructive of autonomy to deprive a person of liberty, by means of a sentence of imprisonment, with such proof of fault. “

23.10.3 Controlling the drug menace by convicting the accused with harsh punishment under the NDPS Act in the interest of the society and acquitting when there is no strict proof of ingredients of the provision of the Act, are the two sides of the legal requirement of fair justice under the NDPS jurisdiction. The Court always has to consider the triangular interest of society, accused and prosecution.

23.10.3.(1). Ganja:

“Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”

23.10.3.(2). Accompanied:

It is also relevant to rely the following judgment of the Hon'ble Supreme Court in the case of *Sitaram vs. Radhey Shyam Vishnav* reported in **2018 (4) SCC 507** to consider the word “Accompanied”



and the same reads as follows:

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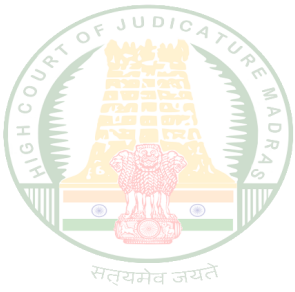
“The Word used in the Rule is “accompanied” and the term “accompany” means to co-exist or go along. There cannot be a separation or segregation.”

23.10.3.(3). Comma:

It is no longer res integra that when a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. “Presence of Comma” and “absence of comma” has been interpreted by the Hon'ble Supreme Court on various occasions in the following cases namely: **1952 (2) SCC 237, 1979 (1) SCC 568, 2020 (8) SCC 129, 2020 (9) SCC 121, 2024 (4) SCC 481** whether to understand the provisions by giving literal meaning or avoiding literal meaning. In both the circumstances, the Hon'ble Supreme Court expects the courts to look into the intent of the legislation.

23.10.4 It is relevant to rely on the following judgment of the Hon'ble Supreme Court in the case of ***Sree Durga Distributors v. State of Karnataka*** reported in **2007 4 SCC 476** to interpret “**Comma**” and the same reads as follows:

“5...The punctuation mark “Comma” has been used



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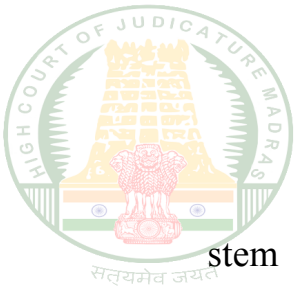


expressly after the words “animal feed and feed supplements”, which indicates that the legislature intended to classify these two items as one class/category. Further, the legislature intended to restrict that category by confinement category to processed commodity alone and that too for certain named animals.”

23.10.5 Using of “**Comma**” “*that is*” **“Comma**” is a clear indicator to mean “the flowering or fruiting tops of the cannabis plant” alone come under the purview of the definition of Ganja. Seeds and leaves would be included only when they are *accompanied by the tops*.

23.10.6. The “**Comma**” and the words “*that is*” followed by a comma is a clear indicator to mean that the flowering or fruiting tops of the cannabis plant alone come under the definition of ganja and in some cases, seeds and small leaves otherwise called “vegetative tops” as discussed above would be included only when they are accompanied by the flowering or fruiting tops. But, there is total exclusion of compound leaves namely, luxuriant leaves, stalk and stem.

23.10.7 In view of the specific exclusion of compound leaves namely, luxuriant leaves in the definition of ganja, the luxuriant leaves



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stem and stalk can not be taken into account to bring it under the definition of Section 2(iii)(b) of NDPS Act. If the flowering or fruiting tops are accompanied by small leaves and seeds namely, vegetative tops, then it can be wholly taken into account to bring it under the definition of ganja.

23.10.8 At the cost of repetition, this Court holds that if the contraband is accompanied by luxuriant leaves, stem and stalk, with the flowering or fruiting tops, the weight of flowering tops or fruiting tops alone to be considered. If the contraband is accompanied by small leaves and seeds namely, the vegetative tops, then the whole weight can be considered.

23.10.8. The reasoning of this court is also further strengthened by looking into the meaning of the “flowering tops” as per the National Library of Medicine's controlled vocabulary thesaurus, MeSH (Medical Subject Headings) that “it refers to the parts of a plant that are in flower; including the leaves, stems and blooms” But the legislature has omitted the leaves, stems. The legislature has made it clear to bring only the portion of the flowering or fruiting tops of the cannabis plant as



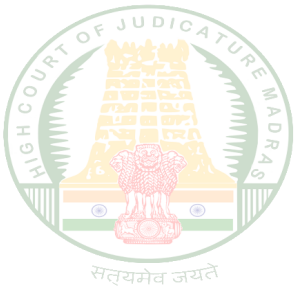
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offending psychoactive material under NDPS Act and the same is further strengthened from following portion of “***National Policy on Narcotic Drugs and Psychotropic Substances*** under the head of ***Cultivation of Cannabis***”

“21. Bhang is a preparation made from cannabis leaves consumed in parts of India on some festivals. As it is not made from cannabis resin or from flowering tops, it is not covered under the NDPS Act, 1985. Production and sale of Bhang is permitted by many State Governments. Whoever is so licenced to produce Bhang shall be allowed to produce it from the leaves of the wildy grown cannabis plants only. They shall not use the flowering tops or the resin produced from the plants. If anyone is found mixing with Bhang any part of flowering tops or the resin produced from the cannabis plants, he shall be punishable under relevant provisions of the NDPS Act, 1985 and if he happens to be a licensee, his license shall also be cancelled.

22. Cannabis plant can be a source of biomass and fibre for industrial purposes. Cannabis seeds can be used to produce cannabis seed oil - a high value oil. Some countries license cultivation of cannabis varieties which have very low content of tetrahydrocannabinol (THC), the active ingredient which has the intoxicating effect. These varieties of cannabis are used to produce fibres which are, in turn, used in production of fabrics and for production of biomass.

23. Section 14 of the NDPS Act empowers the Government to, by general or special order, permit cultivation of cannabis

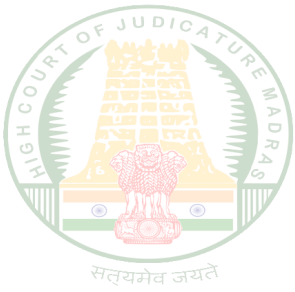


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exclusively for horticultural and industrial purposes. The Central Government shall encourage research and trials of cultivars of cannabis with low THC content. The Central Government shall, however, follow a cautious, evidence-based approach towards cultivation of cannabis for horticultural and/or industrial purposes and shall take decisions based on results of research.”

23.10.10. Therefore, this courts is not declined to accept the argument of the learned Public Prosecutor that கத்திரிகள் impliedly denoted flowering and fruiting tops and this court holds that to bring the recovered contraband under the definition of 2(iii)(b) of the NDPS Act, i.e., the weight of the flowering or fruiting tops of cannabis plant should be above threshold limit mentioned in the schedule *excluding Compound leaves* otherwise called *luxuriant leaves, stalk, stem, bag and in some circumstances excluding of the weight of seeds and leaves when not accompanied with the tops*. If the flowering or fruiting tops of cannabis plant are not separately recovered and recovered with stalks and stem, the legal requirement is to exclude the weight of the stalks and stem. If seeds and leaves are recovered, the prosecution should prove that the recovered seeds and leaves were accompanied with flowering tops or fruiting tops.



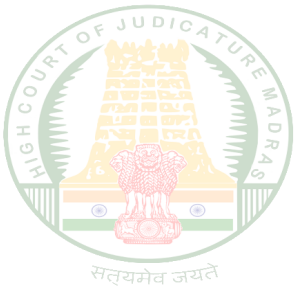
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23.10.11. Therefore, if flowering or fruiting tops is recovered and if recovered Ganja is accompanied with leaves and seeds, with either stems or stalks, then it is the duty of the investigating agency to measure the offending materials separately (i.e., leaves, seeds and flowering or fruiting tops) to be measured together but not the stem and stalk, and stem or stalk to be measured separately.

23.10.12. Therefore, in the case of ganja, appearance of the recovered contraband is material. It must contain flowering or fruiting tops of the cannabis plant. Now the judgments are delivered on the basis of the chemical analysis report made on the basis of heterogeneous mixture sample with the name of the chemical, namely "*cannabinoid*".

23.11. Burden of Proof:

23.11.1 It is well settled principle of Criminal Jurisprudence that more serious the offences, the stricter would be the degree of proof and higher degree of assurance would be necessary to convict an accused. The Hon'ble Supreme Court reiterated the said principles in various cases including the case of ***Balwinder Singh (BINDA) vs. The Narcotic control Bureau*** reported in ***2023 INSC 852***
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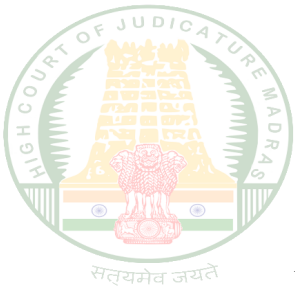
*“Since the provisions of the NDPS Act and the punishments prescribed therein are stringent, the extent of burden of prove the foundational facts cast on the prosecution, would have to be more onerous. The view taken was that Courts would have to undertake a heightened scrutiny test and satisfy itself of “proof beyond all reasonable doubt”. Emphasis was laid on the well-settled principle of criminal jurisprudence that more serious the offence, the stricter would be the degree of proof and a higher degree of assurance would be necessary to convict an accused [Also refer: **State of Punjab vs Baldev Singh, Ritesh Chakarvarti v. State of M.P., and Bhola Singh (supra)**]”*

23.11.2 The Hon'ble three Judges bench in the case of **Union of India v. Bal Mukund**, reported in **(2009) 12 SCC 161** has held as follows:

“28. Where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years, and making stringent provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon.”

23.11.3. In the case of **Gangadhar v. State of M.P.**, reported in **(2020) 9 SCC 202**

8. The presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain



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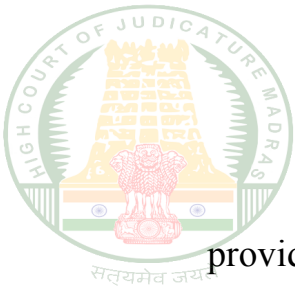
possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability.

10. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of 10 years, absence of any provision for remission do not dispense with the requirements of prosecution to establish a prima facie case beyond reasonable doubt after investigation, only whereafter which the burden of proof shall shift to the accused. The gravity of the sentence and the stringency of the provisions will therefore call for a heightened scrutiny of the evidence for establishment of foundational facts by the prosecution.

23.11.4. The said compliance is legally required to be followed in the border line cases of the recovered contraband having weight between 21 and 25 kgs. In more than 25 kgs cases, there would be no significant change in the weight of the contraband.

23.11.5. The said guesstimation is on the basis of the chemical analysis report furnished before the Court with the presence of the “connabiniod”. In the case of commercial quantity, the NDPS Act

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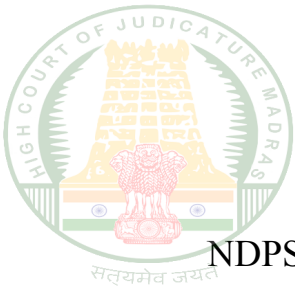
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provides harsh punishment of minimum punishment of 10 years Rigorous Imprisonment and minimum fine of 1 Lakh. Accused's right to get bail is an exception and if bail is not granted, he would languish in jail till his acquittal. In most of the convicted cases, the accused is unable to pay the fine amount. Therefore, many courts have not numbered the petition to suspend sentence without payment of fine amount.

23.11.6. When the Act itself excludes seeds and leaves of the cannabis plant in certain circumstances, and does not include stem and stalk, the burden on the prosecution to prove that their case comes under the definition is heavy, considering the harshness of the punishment and the rigidity of the procedure in conducting trial.

23.12 Calculation of Weight:

23.12.1. To calculate the weight of the flowering or fruiting tops of cannabis plant including the leaves and seeds if it is accompanied by the flowering or fruiting tops, "the physical features of the recovered contraband" is to be clearly stated in the recovery mahazar, report under Section 52(A) of the NDPS Act when the sample is taken either at the spot or before the learned Judicial Magistrate under Section 52(A) of the



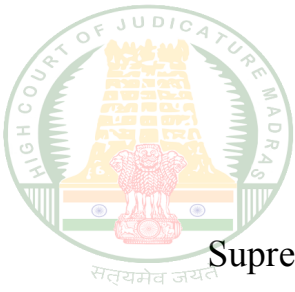
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NDPS Act. In the absence of the same, it is difficult to arrive at the exact weight of the contraband in the border line cases namely, the cases covered between 21kgs to 25 kgs.

23.12.2. The investigating agency should measure the weight of the bag (container) separately, the weight of the stem and stalk separately. In view of this situation, before convicting accused for possession of commercial quantity covering border line cases i.e., between 21-25 kgs ganja, it is mandatory to measure the weight of flowering or fruiting tops without stem and stalk as per definition of ganja.

23.12.3. This court is dealing with more number of commercial quantity cases of ganja. In most of the cases, prosecution relied upon two police witnesses to seek conviction. On the basis of two police witnesses, a man is sentenced to undergo 10 years RI without bail. .

23.12.4. The Theory of guesstimation has been applied by Honble



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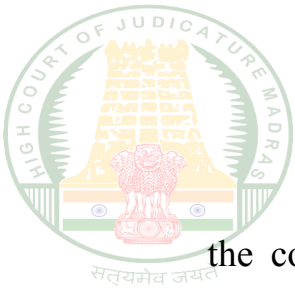
Supreme Court on various occasions¹. This extraordinary situation warrants extraordinary remedy² and this court is cautious and aware that personal experience has no role in determination of criminal cases. But, at the same time foisting of false case of commercial quantity boosting the weight of ganja to above 20 kgs also has to be accounted for. This court has to see the triangular interest of accused, prosecution and society.

23.12.5. Both the investigating agency and prosecution agency should act in a fair manner and weigh, describe the proper particulars of the flowering or fruiting tops, specify if it was accompanied with leaves and seeds or not, specify the weight of stem and stalk, of seized ganja separately. The above exercise may be a difficult task but in view of the stringent provision and stringent punishment, they ought to do this. It is settled law that in the case of the grave punishment the prosecution is expected to prove the case strictly complying with the requirement of law. The ongoing practice of convicting the accused for the possession of

¹*i) Kamta Prasad Singh vs. State of Bihar [1976 (3) SCC 772] (ii) Trishala Jain vs. State of Uttaranchal [2011 (6) SCC 47]*

(iii) Newkhla Industrial Development Authority vs. Harnand Singh (deceased) through Lrs and others [2024 SCC Online 1691]

²*(iv) Prithipal Singh vs. State of Punjab 2012 (1) SCC 10 (v) B.P. Achala Anand vs. S. Appi Reddy 2005 (3) SCC 313*



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the commercial quantity without identification and segregation of the flowering parts of the hemp is not correct. Chemical analysis report is filed indicating that there is cannabinod on chemical analysis.

23.13. Parity:

23.13.1 In most parts of this country, permissible limit of usage of Bhang is not an offence. Some of our states also have brought legislation to permit ganja

cultivation. Under those circumstances, the ongoing procedure, convicting the person on the basis of the recovery of the contraband containing the “drug-containing parts” along with other non drug containing parts, without determining the parts by making separate weighment, is not correct. As on date, the approach entertained by the police department and the chemical analysis lab is that Ganja means cannabinoid. The said chemical is present in both drug containing parts and non-drug containing parts. Culpability is fixed on the higher percentage of THC level in the drug containing parts. “BHANG” contains 15% of THC. Whereas, flowering parts of the Ganja contains more than 25% of THC. Possession of “BHANG” prepared from the cannabis leaves one part of India is not treating offence but treating the



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said leaves as offending material in other part of India to record conviction under the Commercial Quantity without flowering or fruiting tops amounts to disparity. Hence, there should be parity in approaching cases in the ongoing procedure in convicting the accused for the possession of the luxuriant leaves, Stem, Seeds stalk in the case of commercial quantity. Otherwise, there would be miscarriage of justice and failure of fair justice.

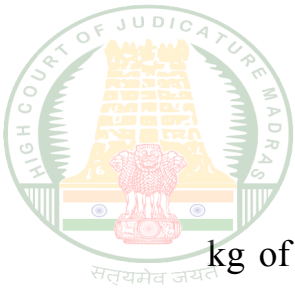
23.14. Discussion on the merits of the Case:

23.14.1. Chemical Analysis Report:

In all cases, the chemical analysis report has been marked with the same contents which reads as follows:

மாதிரிகளின் விவரங்கள்	முடிவு மற்றும் அறிக்கை
ஒரு காகித உறையின் (SI என்று குறிப்பிடப்பட்டிருந்தது) உள்ளே உலர்ந்த நிலையில், பசுமை கலந்த பளுப்பு நிறமுள்ள சிறு இலைகளுடன் கூடிய கதிர்கள், விதைகள் மற்றும் நொறுங்கிய இலைகளுடன் கூடிய பொருளின் நிகர எடை 22 கிராம்.	முடிவு SI என்று குறிப்பிடப்பட்டிருந்த பொருளில் கெனாபினாயிடுக்ள் இருப்பது கண்டறியப்பட்டது.

23.14.2. From the above reading of the evidence, it is clear that 22



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kg of ganja was recovered from a bag. The said recovered ganja in the bag contained seeds and leaves. Neither fruiting tops nor flowering tops were found. The seized ganja was not accompanied with flowering or fruiting tops. The weight of the bag also was not separately measured.

23.14.3. No scrap of material was produced to visualize that the seized ganja contained the flowering or fruiting tops of cannabis plant. The weight of the bag also was not measured. If total weight of the seized contraband in the bag has been taken “*with bag, seeds, leaves, stem, stalk without demarcation of the weight of the flowering or fruiting tops of the cannabis plant*” to arrive at the weight of the recovered contraband to bring it as commercial quantity, in view of the stringent provision of the NDPS Act 1985, the accused would have to face harsh punishment.

23.14.4. This court is answerable to the “commonsensical question” that when it is found that the recovered contraband neither contains flowering or fruiting tops of the cannabis plant, there is no question of convicting the person for the possession of the Ganja either under the commercial quantity or below commercial quantity. The



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learned public prosecutor would submit that the chemical analysis report disclosed the contents of the **cannabinoid**. Whether it forms part of the flowering or fruiting tops other than the seeds, stem, stalk of the hemp is a matter of fact and that is not clear from the materials seized. This court has to consider the said submission of the Public Prosecutor in consonance with the object of the NDPS Act. Once various parts of the hemp were recovered along with the offending material of ganja it cannot be said that conviction can not be recorded even for the below commercial quantity.

23.14.5. In the said circumstances this Court would like to go into the following Venn diagram drawn and the finding rendered by the Hon'ble Judge of the Delhi High Court in the case of ***Ravina Kumari Vs. State (NCT of Delhi)*** reported in **2024 SCC OnLine Del 6748**

*“14. Though it is not in dispute that Ganja was recovered, the petitioner has taken a specific plea that the recovered quantity of **23.456 kg Ganja** included the leaves and stalks/stems which does not fall in the definition of contraband material and the actual quantity of Ganja would only be **mere 3.465 Kg.**, i.e. much lesser than the commercial quantity of 20 kgs.*

15. At this juncture, it becomes apposite to analyse whether the recovered material falls within the definition of “Ganja”?



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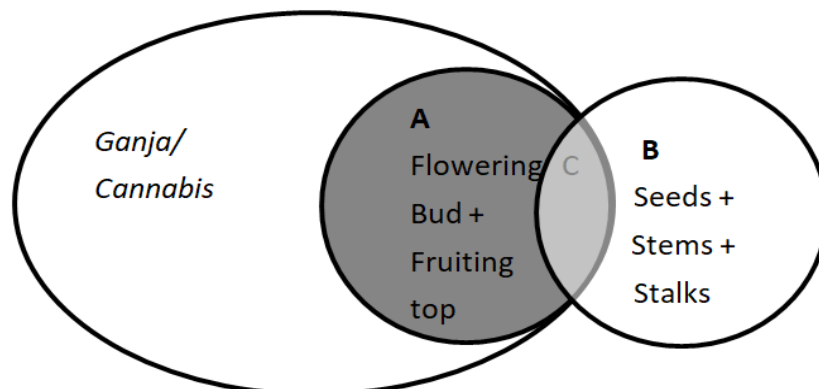
16. The definition of Ganja is provided under section 2 (iii)(b) of the NDPS Acts which reads as under:—

“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (**excluding the seeds and leaves when not accompanied by the tops**), by whatever name they may be known or designated;”

17. From the definition, it is evident that flowering buds and fruiting tops of the cannabis plant would be covered under section 2 (iii)(b) but merely leaves/seeds and stalks would not form a part of the definition of “Ganja” unless accompanied by the flowering and fruiting tops.

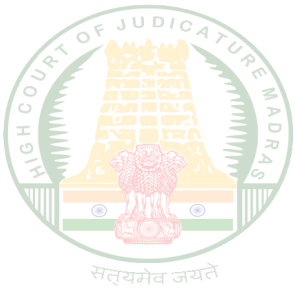
18.

*This
can
be*



represented accurately by the below Venn diagram:

19. Thus, the intention of the Legislature appears to be clear that in case of Ganja, if it is merely **Category A** i.e. a homogenous mixture



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of flowering buds and fruiting tops, then the same would fall within the meaning of “Cannabis”, however, if it is merely **Category B** i.e., a homogenous mixture of seeds/leaves/stalks without the fruiting tops and buds, then the same would not attract the provisions of the NDPS Act.

20. Though the position with respect to homogenous mixtures i.e., **Category A & B** is clear, there is often a conundrum surrounding the quantification of **Category C**, i.e. the overlap between Category A and Category B constituting the heterogenous mixtures which include both the flowering tops and fruiting buds, along with the stems/leaves and seed.

21. From the framework of the entire NDPS Act and a reading of S. 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.

22. Similar observations have been made in the cases of Kunal Dattu Kadu (Supra) and Shri Sandip Ashok Raut (Supra) and it was held that to ascertain whether the material seized was Ganja, it will have to be ultimately ascertained whether the flowering and fruiting are accompanied by the seeds and leaves as the weight of these seeds/leaves/stems, has to be excluded.



23. Axiomatically, the weight of seeds/stalks and stems (**Category B**) should be excluded while calculating the actual quantity (**Only Category A**) recovered.

24. Evidently, the present case is of a recovery falling within **Category C**. The Chargesheet records that when the Petitioner/Ravina was apprehended, blue coloured plastic polythene bag was recovered from her which contained **grass-like flowery-leafy material along with its stems**, which appeared to be “Ganja” and was seized vide the seizure memo. On weighing the recovered Ganja, on the electronic weighing machine, the total weight of the quantity recovered, was about **24.145 Kg**.

25. The FSL Report confirmed that on physical, Chemical. Microscopic and TLC examination, exhibits ‘SA-1’ and ‘SB-1’ were found to be “Ganja”.

26. Pertinently, the recovered quantity of about 24.145 Kg was just 4.145 kgs more than the commercial quantity. Since, the entire substance including stems/stalks and dried leaves were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of ‘Ganja’ seized from the Applicant may be less than commercial quantity so as to attract Section 20 of the NDPS Act....”

23.14.6 Similar view is also taken by the various courts while considering the following quantities:

Sl.No	Reference	Quantity
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1.	Kunal Duttu Kadu Vs. Union of India 2022 SCC OnLine Bom 1770	43 kg
2.	Shri Sandip Ashok Raut Vs. State of Maharashtra 2015 SCC OnLine Bom 4543	187 kg
3.	Rajesh Sharma Vs. State of Rajasthan 2024 SCC OnLine Raj 485	28.600 gms (cannabis)
4.	Bettanayaka Vs. State of Karnataka 2020 SCC OnLine Kar 3916	20 kg
5.	Ratanlal Kharadi Vs. State of M.P 2019 SCC OnLine MP 6083	21 Kg. 400 grms
6.	Ratnesh Vs. State 2017 SCC OnLine Del 9883	20 kg
7.	Suresh Kumar Vs. State 2016 SCC OnLine Del 1209	25 kg and 100 gm of ganja
8.	Lavlesh Kumar Vs. State 2015 SCC OnLine Del 12574	22 kgs of Ganja

23.14.7 In similar circumstances, this court also excluded the weight of the bag, stalk and stem and converted the case from commercial quantity into below commercial quantity in the case of ***K.V.Ramasamy*** reported in ***2010 (1) TNLR 51 (MADRAS).***”

23.14.8. In all these cases there is some ambiguity whether the seized ganja was weighed excluding the weight of the bag, stalk, stem, luxuriant leaves or only flowering or fruiting tops of the cannabis plant. Even in the report there is no whisper about the presence of the Tetrahydrocannabinol as chief intoxicating ingredient. Therefore,

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considering the overall circumstances and also taking into account that the appellants are confined in prison without bail from the date of arrest, during the trial and pendency of these appeals, this court holds that conviction cannot be recorded on ambiguity about the exact weight of the drug containing parts of the hemp as defined under the definition of ganja in these border cases namely cases covered between 21 kg to 25 kg.

23.15. Discussion on the Principle of “HIRA SINGH” Case:

23.15.1 The learned additional public prosecutor's submission to apply the “*principle of Hira Singh case*” is misconceived one under the Act and national policy on Narcotic Drugs and Psychotropic Substances, since there are two types of narcotic drugs namely “Natural and Synthetic”. As per definition of Narcotic drugs Section 2(xiv) of the NDPS Act, 1985 reads as follows:

“narcotic drug” means coca leaf, cannabis (hemp), opium poppy straw and includes all manufactured drugs”

23.15.2. As per the national policy on Narcotic Drugs and



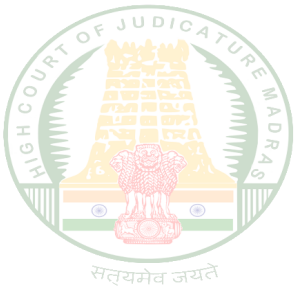
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Psychotropic Substances and as per the NDPS Act, Narcotic Drugs are of two kinds – “Natural and Synthetic”. Ganja is a natural drug and it is used as a medicinal plant. As stated earlier, in this case the question of “mixture” of synthetic drugs has not arisen.

23.15.3 Cannabis (hemp) is one of the natural drugs and its significant quantities of psychoactive constituent is present only in the flowering and fruiting tops, and the small leaves (petal) next to the flowering tops and therefore legislature in its clear wisdom excluded the remaining parts of the plants. Therefore, the principle laid down in the Hira Singh case is applicable only to the manufactured drugs and is not applicable to the natural drugs.

23.15.4. To make further clarity on the issue of applicability of principle of *Hira Singh*, it is relevant to extract the following paragraphs of the said judgment in the case of *Hira Singh vs. Union of India* reported in **2020 (20) SCC 272** hereunder:

“10.4. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”,



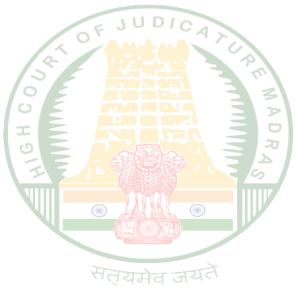
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including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of the NDPS Act would be achieved. Any other intention to defeat the object and purpose of enactment of the NDPS Act viz. to the Act is deterrent.”

23.15.5 In case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and is to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the narcotic drugs or psychotropic substances.

23.15.6. From the above law laid down by the Hon'ble Supreme Court in the case of ***Hira Singh vs. Union of India*** reported in **2020 (20) SCC 272**, it is clear that the ratio is applicable to “manufactured drugs” i.e., “Synthetic drugs”. The question of “mixture” of synthetic drugs has not arisen in this case. In this case the interpretation of meaning of the natural drug namely “Ganja” is the issue.

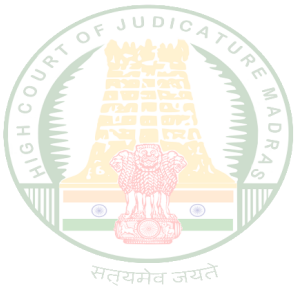


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23.15.7. The judgment relied by the learned Public Prosecutor reported in **CDJ 2010 MHC 2446** (Ramesh case), **2009 (2) SCC 26**, CrI.O.P.(MD) No.18999 of 2024 are held to be not applicable to the present case as in all the above cases, the ganja was recovered with the flowering tops.

23.15.8. In CrI.A.(MD).Nos.396, 397, 399 and 400 of 2023, two set of accused allegedly carried 30 kgs of Ganja in two travel bags and one gunny bag. The recovered ganja is without any flowering or fruiting tops. Therefore, this Court under guesstimation holds the weight ganja might be below the commercial quantity if the weight of the two travel bags, one gunny bag, stalk, luxuriant leaves, seeds, stem are excluded. Therefore, this Court is inclined to convert the conviction of appellants into Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

23.15.9. This Court is also duty bound to clarify that the above interpretation applicable to “ganja” is not applicable to the case of the “charas” in view of the inclusive and expanding following definition of charas in section 2 (iii) (a) of the NDPS Act, 1985



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“charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish”

23.16. Therefore, this Court arrives at the conclusion that the appellant's case does not come under the category of commercial quantity and he is not liable to be convicted **“under Section 8(c) r/w 20 (b) (ii) (C) of the NDPS Act, 1985”** and he is liable to be convicted **“under Section 8(c) r/w 20 (b) (ii) (B) of the NDPS Act, 1985”**.

23.17. Therefore, this Court inclines to accept the argument of all the learned counsels for the appellants to convict all the appellants under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act, considering the special circumstances of the case that the contraband was recovered with leaves, seeds, stem and stalk and without any materials to prove the presence of flowering or fruiting tops alone and without measurement of the separate weight of the bag, seeds, stem, stalks etc. Pertinently, the recovered quantity more than the above small and below commercial quantity. Since, the entire substance including stems/stalks and dried

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leaves with bags were weighed together without quantifying the weight of the flowering or fruiting tops, the quantity of 'Ganja' seized from the appellants may be less than commercial, pertinently, the recovered quantity was just 1 to 5 Kgs more than 20 kgs.

23.18. Therefore, in view of the positive report of the chemical analysis about the presence of the cannabinod, this Court is of the opinion that seized ganja is a heterogeneous mixture of offending drug containing parts of the hemp and the other non-offending drug containing parts of the hemp and this Court at this stage of the appeal feels to convert the conviction under "Section 8(c) r/w 20 (b) (ii) (C) of the NDPS Act, 1985" into one under "Section 8(c) r/w 20 (b) (ii) (B) of the NDPS Act, 1985".

24. Conclusion on conviction:

24.1. Allowing illegality to be perpetuate at the cost of confinement in prison without bail, conviction and sentence of imprisonment of ten years and minimum fine of one lakh under the NDPS Act of various accused for the possession of the commercial



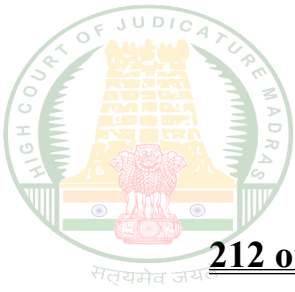
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quantity of Ganja without weighing psychoactive parts of the hemp mentioned in the definition of Ganja U/s. 2(ii) of the NDPS Act and weighing the totality of hetero-genic mixture of flowering or fruiting tops of the cannabis plant, luxuriant leaves, seeds, stems and stalks, amounts to deprivation of the fundamental right of the accused a fair trial. The Hon'ble Supreme Court in various cases has held that once their perpetuated illegality is brought to the knowledge of the court it is duty of the Constitutional Court, to curb the said illegality by bringing the remedial measures without allowing the same to continue. And the same is fortified by the following decision of the Hon'ble Supreme Court **2015 (2) SCC 591, 2010 (11) SCC 455 and 2011 (3) SCC 436.**

24.2 Accordingly, all the appeals are partly allowed and conviction passed against the appellants in all cases in respective C.C.nos. for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside and all the appellants are convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

25. Discussion on the sentence of imprisonment:

25.1 Discussion on the question of sentence in Crl.A.(MD).No.

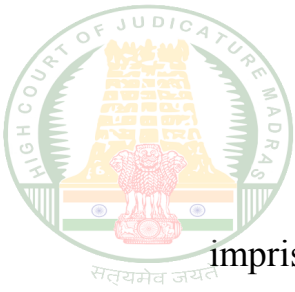


212 of 2020:

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The appellant is the sole accused in C.C.No.365 of 2019 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 16.06.2020 onwards.** In jail, he has not involved in any offence and his conduct also good. He is aged about 61 years and he is the sole breadwinner of his family and he has one male child and female child and he is bound to safeguard the interest of the family members. The learned counsel for the appellant would submit that the *appellant has been transferred from Madurai Central Prison to Trichy Central Prison.*

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment of sentence already undergone and to pay a fine of Rs. 50,000/- with default sentence of 6 months simple



imprisonment.

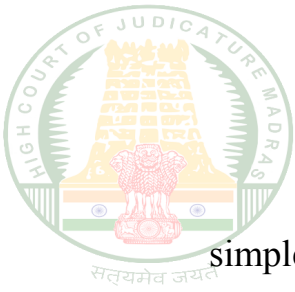
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25.2 Discussion on the question of sentence in Crl.A.(MD).No.

172 of 2023:

The appellant is the sole Accused in C.C.No.429 of 2019 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 21.08.2019 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 48 years and he is the sole breadwinner of his family and he has wife and three female children and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment of sentence already undergone by the accused and pay a fine of Rs. 50,000/- with default sentence of 6 months



simple imprisonment.

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25.3 Discussion on the question of sentence in Crl.A.(MD).No.

293 of 2021:

The appellant/sole accused in C.C.No.428 of 2019 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 20.01.2021 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 54 years and he is the sole breadwinner of his family and his wife is suffering from serious illness and he has three children and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court



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inclines to award the punishment of sentence which has been already undergone by the accused and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

25.4. Discussion on the question of sentence in Crl.A.(MD).No. 331 of 2023:

The appellant is the Sole Accused in C.C.No. 337 of 2021 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 12 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 22.11.2022 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 58 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court



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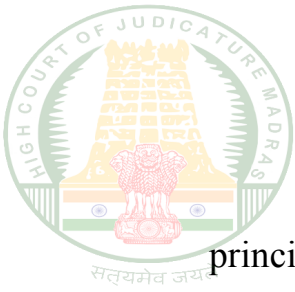
inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

25.5. Discussion on the question of sentence in Crl.A.(MD).No. 396, 400, 399, 397 of 2023:

25.5.1. Discussion on the question of sentence in Crl.A. (MD).No.396 of 2023:

The appellant is A4 in C.C.No.160 of 2016 and she was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default sentence of 12 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **She is confined in prison from 29.03.2023 onwards.** In jail, she has not involved in any offence and her conduct also good. She is aged about 35 years.

Considering the mitigating and aggravated circumstances and the



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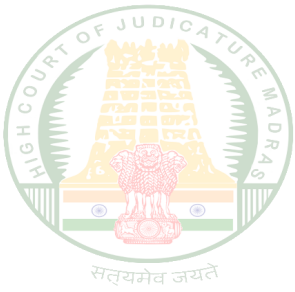
principle laid down by the Hon'ble Supreme Court in the case of *Sunitha*

Devi Vs. State of Bihar reported in 2024 SCC Online 984, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

25.5.2 Discussion on the question of sentence in CrI.A.

(MD).No.397 of 2023:

The appellant is the A1 in C.C.No. 160 of 2016 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 12 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 29.03.2023 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 45 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.



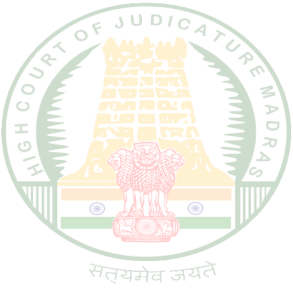
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Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

25.5.3 Discussion on the question of sentence in CrI.A.

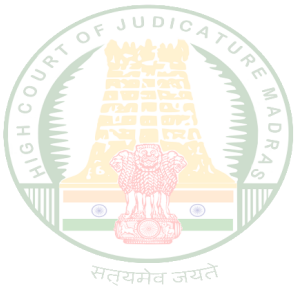
(MD).No.399 of 2023:

The appellant is the A2 in C.C.No. 160 of 2016 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 12 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 29.03.2023 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 58 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.



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Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

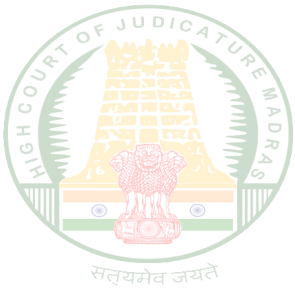


25.5.4 Discussion on the question of sentence in CrI.A.

(MD).No.400 of 2023:

The appellant is A3 in C.C.No.160 of 2016 and she was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default sentence of 12 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **She is confined in prison from 29.03.2023 onwards.** In jail, she has not involved in any offence and her conduct also good. She is aged about 65 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.



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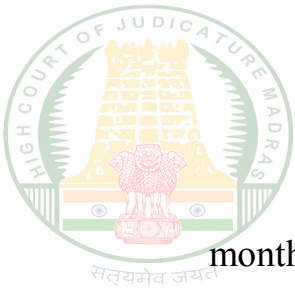
25.6. Discussion on the question of sentence in Crl.A.(MD).No.

507 of 2023 and Crl.A.(MD).No.94 of 2024:

**25.6.1. Discussion on the question of sentence in Crl.A.
(MD).No.507 of 2023:**

The appellant is A2 in C.C.No.30 of 2022 and he was directed to undergo 12 years rigorous imprisonment and to pay fine of Rs.1,20,000/- in default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 01.12.2021 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 33 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar reported in 2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6



months simple imprisonment.

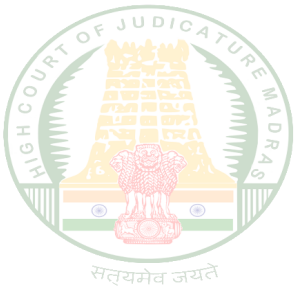
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25.6.2 Discussion on the question of sentence in CrI.A.

(MD).No.94 of 2024:

The appellant is A1 in C.C.No.30 of 2022 and he was directed to undergo 12 years rigorous imprisonment and to pay fine of Rs.1,20,000/- with default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 01.12.2021 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 39 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar reported in 2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.



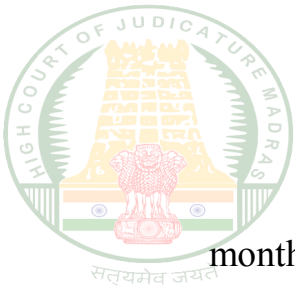
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25.7 Discussion on the question of sentence in Crl.A.(MD).No.

534 of 2022:

The appellant is the Sole Accused in C.C.No.138 of 2020 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **He is confined in prison from 01.03.2020 onwards.** In jail, he has not involved in any jail offence and his conduct also good. He is aged about 58 years and he is the sole breadwinner of his family and he is bound to safeguard the interest of the family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar reported in 2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment and pay a fine of Rs. 50,000/- with default sentence of 6



months simple imprisonment.

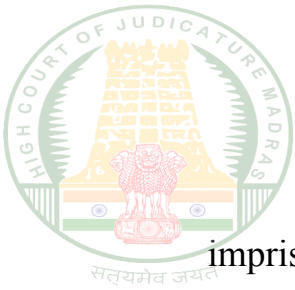
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25.8 Discussion on the question of sentence in Crl.A.(MD).No.

551 of 2023:

The appellants are the Accused No.1&2 in C.C.No.333 of 2016 and they were directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- each in default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They are **confined in prison from 20.01.2023 onwards**. In jail, they have not involved in any jail offence and their conduct also good. Both are female and they are aged above 65 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar reported in 2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous



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imprisonment each and pay a fine of Rs. 50,000/- each with default sentence of 6 months each simple imprisonment.

25.9 Discussion on the question of sentence in Crl.A.(MD).No.

588 of 2023:

The appellants are the A1 & A2 in Special C.C.No.403 of 2022 and they were directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They are **confined in prison from 09.12.2021 onwards**. In jail, they have not involved in any jail offence and their conduct also good. Both of them are male and are aged about 25 and 29 years respectively and they are the sole breadwinner of their respective families and they are bound to safeguard the interest of their family members.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in **2024 SCC Online 984**, this court



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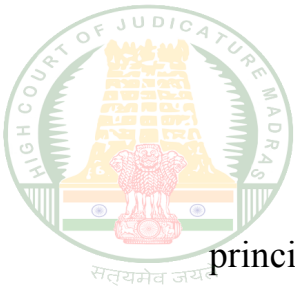
inclines to award the punishment to undergo five years rigorous imprisonment each and pay a fine of Rs. 50,000/- each with default sentence of 6 months each simple imprisonment.

25.10 Discussion on the question of sentence in Crl.A.(MD).No.

724 of 2023:

The appellants are the A1 & A2 in Spl.C.C.No.192 of 2017 and they were directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of one year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They **are confined in prison from 13.11.2022 onwards**. In jail, they have not involved in any jail offence and their conduct also good. Both of them are male and are aged about 75 years and 50 years respectively and they are the sole breadwinner of their respective families and they are bound to safeguard the interest of their family members.

Considering the mitigating and aggravated circumstances and the



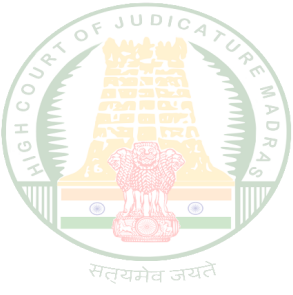
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principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment to undergo five years rigorous imprisonment each and pay a fine of Rs. 50,000/- each with default sentence of 6 months each simple imprisonment.

25.11 Discussion on the question of sentence in CrI.A.(MD).No. 773, 953 of 2023 and CrI.A.(MD).No.265 of 2024:

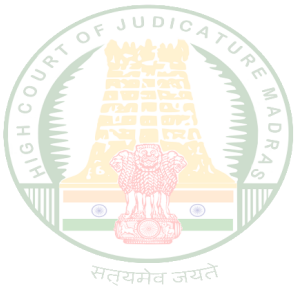
25.11.1 Discussion on the question of sentence in CrI.A. (MD).No. 773 of 2023:

The appellants is the A2 in C.C.No.308 of 2020 and he was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default to undergo 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act. **He is confined in prison from 05.06.2023 onwards.** He is aged about 47 years. In jail, he has not involved in any jail offence and his conduct also good.



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Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment to sentence already undergone by the accused and to pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

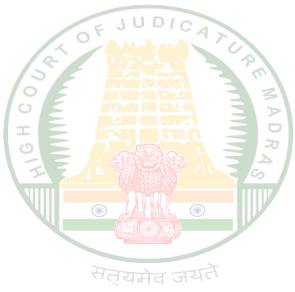


25.11.2 Discussion on the question of sentence in Crl.A.

(MD).No. 953 of 2023:

The appellants is the A3 in C.C.No.308 of 2020 and she was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. **She is confined in prison from 05.06.2023 onwards.** In jail, she has not involved in any jail offence and her conduct also good. She is aged about 45 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of ***Sunitha Devi Vs. State of Bihar*** reported in ***2024 SCC Online 984***, this court inclines to award the punishment of sentence already undergone by the accused and to pay a fine of Rs. 50,000/- with default sentence of 6 months simple imprisonment.

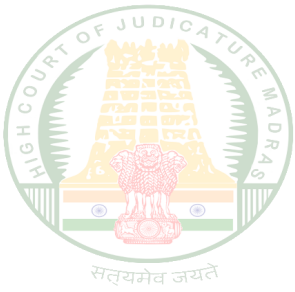


25.11.3 Discussion on the question of sentence in Crl.A.

(MD).No. 265 of 2024:

The appellants are the A1 and A4 in C.C.No.308 of 2020 and they were directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They are **confined in prison from 05.06.2023 onwards**. In jail, they have not involved in any jail offence and their conduct also good. They are aged about 33 years and 29 years respectively.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment of sentence already undergone by the accused and to pay a fine of Rs. 50,000/- each with default sentence of 6 months simple imprisonment each.

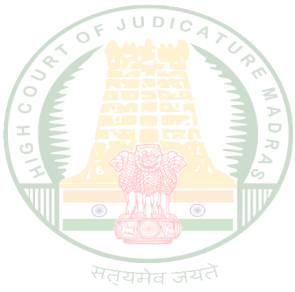


25.12. Discussion on the question of sentence in Crl.A.(MD).No.

322 of 2023:

The Appellant is the sole accused in C.C.No.59 of 2016 and was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They are **confined in prison from 01.09.2022 onwards**. In jail, he has not involved in any jail offence and his conduct also good. He is aged about 51 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment of sentence already undergone by the accused and to pay a fine of Rs. 50,000/- each with default sentence of 6 months simple imprisonment each.



25.13. Discussion on the question of sentence in Crl.A.(MD).No.

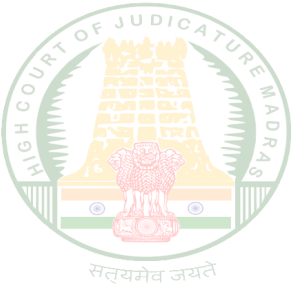
269 and 558 of 2023:

25.13.1. Discussion on the question of sentence in Crl.A.

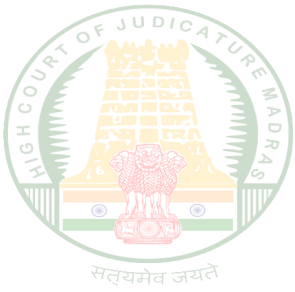
(MD).No.269 of 2023

The Appellant is the accused No.2 in C.C.No.228 of 2016 and was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act. They are **confined in prison from 24.02.2023 onwards**. In jail, she has not involved in any jail offence and his conduct also good. He is aged about 48 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment of sentence already undergone by the accused and to pay a fine of Rs. 50,000/- each with default sentence of 6 months simple imprisonment each.



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25.13.2. Discussion on the question of sentence in Crl.A.

(MD).No.558 of 2023:

The Appellant is the accused No.1 in C.C.No.228 of 2016 and was directed to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default sentence of 1 year simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. Now this Court set aside the same and convicted only under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. They are **confined in prison from 24.02.2023 onwards**. In jail, she has not involved in any jail offence and his conduct also good. He is aged about 49 years.

Considering the mitigating and aggravated circumstances and the principle laid down by the Hon'ble Supreme Court in the case of *Sunitha Devi Vs. State of Bihar* reported in *2024 SCC Online 984*, this court inclines to award the punishment of sentence already undergone by the accused and to pay a fine of Rs. 50,000/- each with default sentence of 6 months simple imprisonment each.



26.Details of modified conviction and sentence of

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imprisonment:

S.No	Appeal No.	Trial Court conviction	Modified conviction passed by this Court	Sentence of imprisonment imposed by the learned Trial Judge with fine	Modified sentence of imprisonment passed by this Court
1	Crl.A. (MD). No. 212 of 2020	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant/sole accused sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Rigorous Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act.	The appellant/sole accused punishment is modified into sentence already undergone and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) in default, to undergo, 6 months simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
2	Crl.A. (MD). No. 172 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant/Sole Accused to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 6 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused punishment is modified into sentence already undergone and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.



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3	Crl.A. (MD). No. 293 of 2021	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant/sole accused sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 6 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
4	Crl.A. (MD). No. 331 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant/Sole Accused sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 12 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.



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5	Crl.A. (MD). Nos. 396, 397, 399 & 400 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The accused Nos.1 to 4 sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 12 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/A1 to A4 are sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
6	Crl.A. (MD). Nos. 507 of 2023 and 94 of 2024	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellants/A2 & A1 sentenced to undergo 12 years Rigorous Imprisonment and to pay a fine of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) in default, to undergo, 6 months Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sA1 & A2 are sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.



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7	Crl.A. (MD). No. 534 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant/Sole Accused sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, to undergo, 1 year Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused punishment is modified into sentence already undergone and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) in default, to undergo, 6 months simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
8	Crl.A. (MD). No. 551 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellants/Accused No.1&2 sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/Accused No. 1&2 are sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.



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9	Crl.A. (MD). No. 588 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 6 months Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
10	Crl.A. (MD). No. 724 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellants/A1 & A2 sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/A1 & A2 sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.



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11	Crl.A. (MD). Nos. 773 & 953 of 2023 and 265 of 2024	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellants/A2, A3, A1 & A4 sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/A2,A3,A1&A4 punishment is modified into sentence already undergone and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
12	Crl.A. (MD). Nos. 322 of 2023	Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (B) of the NDPS Act.	The appellant sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.



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13	Crl.A. (MD). No. 269 of 2023	Sections 8(c) r/w 20(b)(ii) (C), 25, 29(1) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act.	The appellant sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.
13a	Crl.A. (MD). No. 558 of 2023	Sections 8(c) r/w 20(b)(ii) (C), 25, 29(1) of the NDPS Act.	Section 8(c) r/w 20(b)(ii) (C) of the NDPS Act.	The appellant sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) each in default, to undergo, 1 year Simple Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act.	The appellant/sole accused sentenced to undergo 5 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) each in default, to undergo, 6 months simple Imprisonment each for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

27.Final Conclusion in each appeal:

27.1.Accordingly, the appeal in Crl.A.(MD).No.212 of 2020 is

partly allowed on the following terms:-



i) *The conviction and sentence imposed by the II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.365 of 2020 dated 16.06.2020, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.*

ii) *The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.*

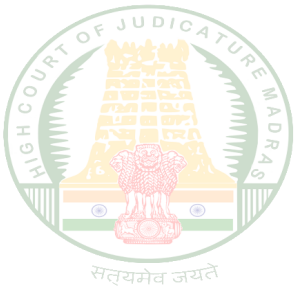
iii) *The appellant is sentenced to undergo 5 year/s of rigorous imprisonment and the appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of 6 months simple imprisonment.*

iv) *The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C. The Prison Authority is hereby directed to release the accused, unless his presence is necessary in any other case.*

(v) *If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*

-Consequently, the connected miscellaneous petition is closed.

27.2. Accordingly, the appeal in Crl.A.(MD).No.172 of 2021 is partly allowed on the following terms:-



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i) *The conviction and sentence imposed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, in C.C.No.429 of 2019 dated 12.03.2021, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.*

ii) *The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.*

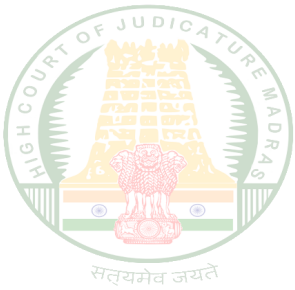
iii) *The appellant is sentenced to undergo 5 year/s of Rigorous Imprisonment and the appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of 6 months simple imprisonment.*

iv) *The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C. The Prison Authority is hereby directed to release the accused, unless his presence is necessary in any other case.*

(v) *If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*

- Consequently, the connected miscellaneous petition is closed.

27.3. Accordingly, the appeal in CrI.A.(MD).No.293 of 2021 is partly allowed on the following terms:-



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i) *The conviction and sentence imposed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, in C.C.No.428 of 2019 dated 29.06.2021, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.*

ii) *The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.*

iii) *The appellant is sentence of imprisonment as already undergone and the appellant is directed to pay a sum of **Rs.50,000/- (Rupees Fifty Thousand Only) as fine** with default sentence of **6 months simple imprisonment.***

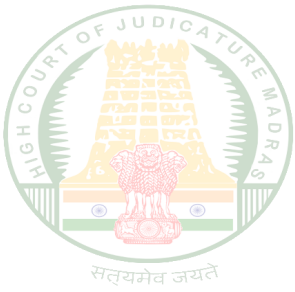
iv) *The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.*

(v) *If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*

- Consequently, the connected miscellaneous petition is closed.

27.4. Accordingly, the appeal in Crl.A.(MD).No.331 of 2023 is partly allowed on the following terms:-

i) *The conviction and sentence imposed by the*



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I Additional Special Judge for NDPS Act Cases, Madurai, in C.C.No.337 of 2021 dated 22.11.2022, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.

ii) The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellant is sentenced to undergo 5 years of rigorous imprisonment and the appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty thousand Only) as fine with default sentence of 6 months simple imprisonment.

iv) The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.

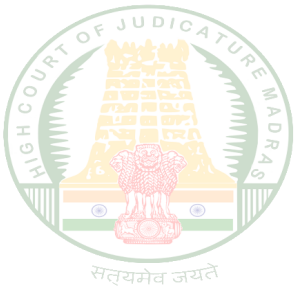
(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

-Consequently, the connected miscellaneous petition is closed.

27.5.Accordingly, the appeals in Crl.A.(MD).Nos.396, 397, 399

and 400 of 2023 are partly allowed on the following terms:-

i) The conviction and sentence imposed by the learned II Additional Special Court for NDPS Act



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Cases, Madurai, Madurai District in C.C.No.372 of 2019 dated 12.01.2023, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.

ii) The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellant is sentenced to undergo 5 years of rigorous imprisonment each and the appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty thousand Only) as fine each with default sentence of 6 months simple imprisonment.

iv) The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.

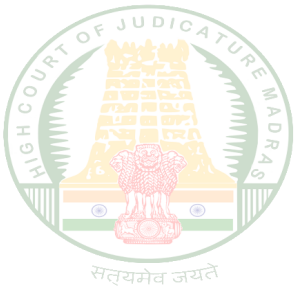
(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

Consequently, the connected miscellaneous petition is closed.

27.6.Accordingly, the appeals in Crl.A.(MD).Nos.507 of 2023

and 94 of 2024 are partly allowed on the following terms:-

i) The conviction and sentence imposed by the Additional District and Sessions Court/Special Court



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for EC and NDPS Act Cases, Pudukkottai, in C.C.No. 30 of 2022, dated 26.05.2023, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.

ii) The appellants are convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellants are sentenced to undergo 5 year/s of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of 6 month/s simple imprisonment.

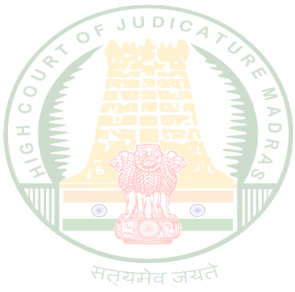
iv) The period already undergone by the appellants is ordered to be set off under Section 428 of Cr.P.C.

(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

- Consequently, the connected miscellaneous petition is closed.

27.7. Accordingly, the appeal in CrI.A.(MD).No.534 of 2022 is partly allowed on the following terms:-

i) The conviction and sentence imposed by the learned I Additional District Judge for NDPS Act Cases at Madurai in C.C.No.138 of 2020, dated



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25.07.2022, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.

ii) The appellants are convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellants are sentenced to undergo 5 year/s of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of 6 month/s simple imprisonment.

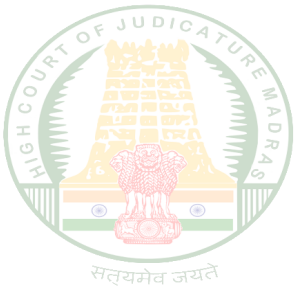
iv) The period already undergone by the appellants is ordered to be set off under Section 428 of Cr.P.C. The Prison Authority is hereby directed to release the accused, unless his presence is necessary in any other case.

(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

- Consequently, the connected miscellaneous petition is closed.

27.8. Accordingly, the appeal in CrI.A.(MD).No.551 of 2023 is partly allowed on the following terms:-

i) The conviction and sentence imposed against the appellants in C.C.No.333 of 2016, dated 20.01.2023, passed by the District and Sessions Court



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for Communal Clash Cases, Madurai, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.

ii) The appellant is convicted under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellant is sentenced to undergo 5 year/s of rigorous imprisonment and the appellant is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of 6 month/s simple imprisonment.

iv) The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.

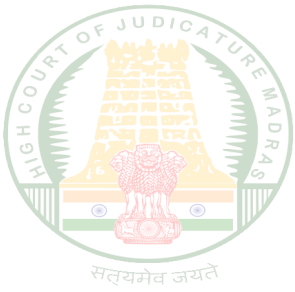
(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

- Consequently, the connected miscellaneous petition is closed.

27.9. Accordingly, the appeals in CrI.A.(MD).Nos.588 of 2023 is

partly allowed on the following terms:-

i) The conviction and sentence imposed by the he learned Principal Special Court for NDPS Act Cases, Madurai, in C.C.No.403 of 2022 dated 31.05.2023, for the offence under Sections 8(c) r/w



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20(b)(ii)(C), 29(1) of the NDPS Act, is hereby set aside.

ii) The appellants are convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

*iii) The appellants are sentenced to undergo 5 year/s of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of **6 month/s simple imprisonment.***

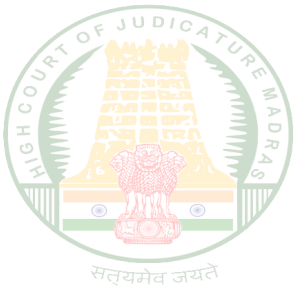
iv) The period already undergone by the appellants is ordered to be set off under Section 428 of Cr.P.C.

(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

- Consequently, the connected miscellaneous petition is closed.

27.10.Accordingly, the appeal in Crl.A.(MD).No.724 of 2023 is partly allowed on the following terms:-

i) The conviction and sentence imposed by the II Additional Special Court for NDPS Act Cases, Madurai, in Spl.C.C.No.192 of 2017 dated 18.11.2022, for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, is hereby set aside.



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ii) *The appellants are convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.*

iii) *The appellants are sentenced to undergo 5 year/s of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as fine with default sentence of **6 months Simple Imprisonment.***

iv) *The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.*

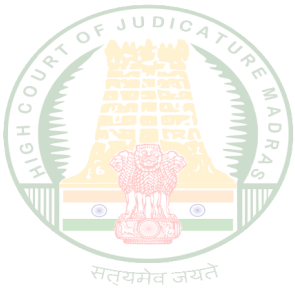
(v) *If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*

-Consequently, the connected miscellaneous petition is closed.

27.11.Accordingly, the appeals in CrI.A.(MD).Nos.773 & 953 of

2023 and 2 65 of 2024 are partly allowed on the following terms:-

i) *The conviction and sentence imposed by the II Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.308 of 2020, dated 05.06.2023, for the offence under Section 8(c) r/w 20(b)(ii)(C) of **the NDPS Act**, is hereby set aside as against the the appellants/A2, A3, A1 & A4 in CrI.A(MD)Nos.773 &*



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953 of 2023 and 265 of 2024

ii) *The appellants/A2, A3, A1 & A4 are convicted for the offence under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act.*

iii) *The appellants/A2, A3, A1 & A4 are sentenced to undergo 5 years of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty thousand Only) as fine with default sentence of 6 months simple imprisonment.*

iv) *The period already undergone by the appellants/A2, A3, A1 & A4 is ordered to be set off under Section 428 of Cr.P.C. The Prison Authority is hereby directed to release the accused, unless their presence is necessary in any other case.*

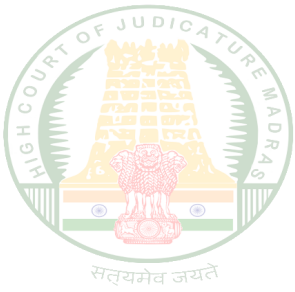
(v) *If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*

- Consequently, the connected miscellaneous petitions are closed.

27.12.Accordingly, the appeals in Crl.A.(MD).No. 322 of 2023

partly allowed on the following terms:-

- (i) *The conviction under Section 8(c) r/w 20(b)*
(ii) *(C) of NDPS Act passed by the learned II*



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Additional Special Judge, Special Court for NDPS Act cases, Madurai, dated 01.09.2022, in C.C.No.59 of 2016, is hereby set aside.

(ii) The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

iii) The appellant is sentenced to undergo 5 years of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty thousand Only) as fine with default sentence of 6 months simple imprisonment.

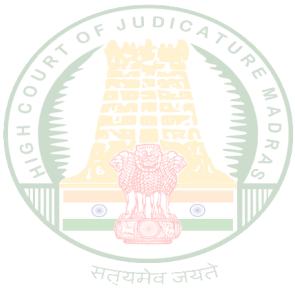
iv) The period already undergone by the appellant is liable to be set off under Section 428 of Cr.P.C.

(v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.

(vi) In all cases, if contraband is in the court or with the police, it shall be ordered to be destroyed.

(vii) Seized Vehicles shall be ordered to be confiscated and disposed.

-Consequently, the connected miscellaneous petition is closed.

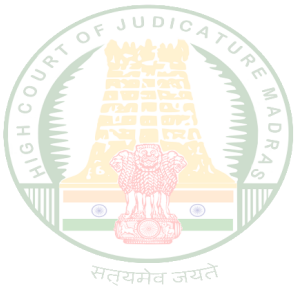


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27.13. Accordingly, the appeals in Crl.A.(MD).Nos.269 and 558

of 2023 partly allowed on the following terms:-

- (i) The conviction under Section 8(c) r/w 20(b)*
- (ii) (C) of NDPS Act passed by the learned Principial Special Judge, Special Court for NDPS Act cases, Madurai, dated 24.02.2023, in C.C.No.228 of 2013, is hereby set aside.*
- (ii) The appellant is convicted for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act.*
- iii) The appellant is sentenced to undergo 5 years of rigorous imprisonment and the appellants are directed to pay a sum of Rs.50,000/- (Rupees Fifty thousand Only) as fine with default sentence of 6 months simple imprisonment.*
- iv) The period already undergone by the appellant is liable to be set off under Section 428 of Cr.P.C.*
- (v) If the fine amount imposed by the learned Judge is paid, the appellant is entitled to refund of the remaining fine amount other than Rs.50,000/- imposed in this appeal.*
- (vi) In all cases, if contraband is in the court or with the police, it shall be ordered to be destroyed.*



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(vii) *Seized Vehicles shall be ordered to be
confiscated and disposed.*

15.10.2025.

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

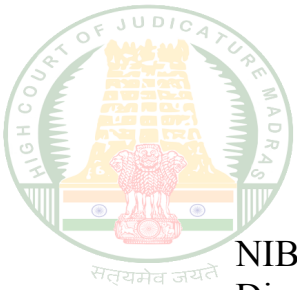
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Note: Issue order copy 23.10.2025

To:

1. The II Additional Special Court for NDPS Act Cases,
Madurai.
2. The I Additional Special Court for NDPS Act Cases,
Madurai.
3. The Additional District and Sessions Court/Special Court for EC and
NDPS Act Cases,
Pudukottai.
4. The District and Sessions Court for Communal Clash Cases,
Madurai.
5. The Principal Special Court for NDPS Act Cases,
Madurai.
6. The Deputy Superintendent of Police,
NIB-CID,
Dindigul.
7. The Inspector of Police,
NIB-CID,
Theni.
8. The Inspector of Police,

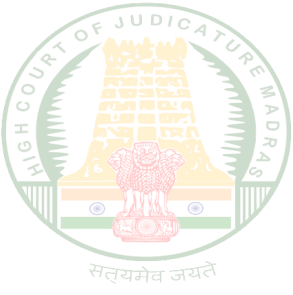
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NIB-CID,
Dindigul.

9. The Inspector of Police,
NIB-CID,
Madurai.
10. The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
11. The Inspector of Police,
Allinagaram Police Station,
Theni District.
12. The Inspector of Police,
Karimedu Police Station,
Madurai.
13. The Superintendent of Prison,
Central Prison,
Madurai.
14. The Superintendent of Prison,
Central Prison,
Trichy.
15. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
16. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

sbn

**Crl.A.(MD).Nos. 212 of 2020, 172 of 2023, 293 of 2021, 331 of 2023,
396, 397, 399 & 400 of 2023, 507 of 2023 and 94 of 2024, 534 of 2022,
551 of 2023, 588 of 2023, 724 of 2023, 773, 953 of 2023 & 265 of 2024,
322 of 2023, 269 and 558 of 2023**

15.10.2025