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).No.351 of 2023
and
Crl.M.P.(MD).No.6830 of 2023

A.Vignesh ... Appellant/Accused No.4

Vs.

The State rep by,
The Inspector of Police,
Thideer Nagar Police Station,
Madurai.
(Crime No.222 of 2021) ... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records and allow the above appeal and set aside the conviction and sentence passed by virtue of the judgment dated 15.03.2023 in C.C.No.329 of 2021 of the learned I Additional Special Court for NDPS Act Cases, Madurai (FAC), and acquit the appellant herein of all the charges.

For Appellant : Mr.G.Karupasamy Pandian

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

JUDGMENT

The appellant/A4 in C.C.No.329 of 2021 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai (FAC), has filed this appeal, challenging the conviction and sentence imposed on him by virtue of judgment dated 15.03.2023, under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

2.**The brief facts of the case as follows:**

On 26.06.2021, at 11.30 a.m, P.W.2 the Sub Inspector of police, C1 Thideernagar Police Station, Madurai City, received the secret information about illegal dealing of Ganja at a place called Melavasal on the rear side of Amma Unavagam Anganvadi Centre. P.W.2 reduced the same into writing under Ex.P.9 and submitted it to his Superior Officer, P.W.4. P.W. 4 permitted P.W.2 to proceed further in the case. Hence, P.W.2 along with his team members went to the place of occurrence at about 11.40 a.m and mounted surveillance. The informant identified the persons. P.W.2 and his team intercepted the appellant and other 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 accused consented to conduct the search

by the officer himself and hence, P.W.2 conducted search and found a white colour sack. They opened the sack and found that there was 24 kg of Ganja. Thereafter, they recovered the contraband after following the procedures and took the samples of (50 gram) as S1 and S2 and properly sealed the same. Thereafter, he arrested the appellant and other accused. The appellant also gave a confession and the same was recorded. Appellant and all the accused were brought to the police station and FIR was registered in Crime No.222 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. After that, P.W.2 handed over the appellant and other accused along with contraband to P.W.3. besides sending a detailed report under Section 57 of NDPS Act to him. Since one of the accused was a juvenile,he was produced before the Juvenile Board. P.W.3 remanded the remaining accused along with contraband before learned Judicial Magistrate after completing all the formalities, the learned Judicial Magistrate remanded the appellant and other accused. Thereafter, P.W.4 conducted investigation and filed the final report before the I Additional Special Court for NDPS Act Cases, Madurai (FAC)/Additional District Judge (FAC) and the same was taken on file in C.C.No.329 of 2021. 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.

3. The prosecution, to prove the case, examined P.W.1 to P.W.4 and exhibited 22 documents as Ex.P.1 to Ex.P.22 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, D.W.1 was examined as a witness and Ex.D.1 to Ex.D.5 were marked.

4. The learned trial Judge after considering the oral and documentary evidence, convicted the appellant 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 Lake only) in default, to undergo, 12 months Simple Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(C) of the NDPS Act.

5. Aggrieved over the same, the appellant has preferred this appeal.

5.1. The learned counsel for the appellant submitted that except the confession of the co-accused, no material was placed before the learned trial Judge to prove the participation of the appellant in the alleged crime. The

presence of the appellant in the scene of occurrence is doubtful on the ground that his signature was not obtained in the recovery mahazar/athatchi under Ex.P.4. The absence of the signature of the appellant in the recovery mahazar/athatchi makes his presence along with the main accused doubtful as claimed by P.W.1 and P.W.2.

5.2. He placed reliance on the precedents of the Hon'ble Supreme Court in ***Firdoskhan Khurshidkhan Vs. The State of Gujarat and Another*** reported in ***2024 (5) SCALE 573, Ajay Kumar Gupta Vs. Union of India*** reported in ***2024 INSC 619*** and ***Tofan singh Vs. State of Tamil Nadu*** *reported in* ***2021 14 SCC 1, case***, and submitted that the conviction on the basis of the confession of the co-accused alone is not legally sustainable. In this case, the learned trial Judge relied on the confession of the co-accused to believe the participation of the appellant in the alleged crime. Hence, he reiterated his submission that the above material is not sufficient to prove the grave charge under NDPS Act. Therefore, he prayed to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.

6. The learned Additional Public Prosecutor on instructions, and upon perusal of the records endorsed the impugned judgment passed by the

learned trial Judge and submitted that P.W.1 and P.W.2 have cogently deposed about the presence of the appellant along with the remaining accused and A1. They were subjected to cross-examination. But, nothing was elicited to disbelieve the presence of the appellant along with the remaining accused and A1. He further submitted that the information was received from the informant with the particulars of identity of the appellant. Therefore, he prayed for dismissal of the appeal by confirming the conviction and sentence passed against the appellant under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act.

7. This Court considered the rival submissions and also perused the records and the impugned judgment and the precedents relied upon by them.

8. The question arising for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellant and the conviction and sentence imposed by the learned trial Judge against the appellant can be sustained or not*?

9. According to the prosecution, on 26.06.2021 at about 12.00 noon, 7 accused including one juvenile were found in possession of 24 Kgs Ganja

near Melavasal, on the rearside of Amma Unavagam. It is the specific evidence of PW2 searching officer that on 26.06.2021 at about 11.30 a.m. he received secret information about the illegal possession of Ganja by 7 accused persons near Melavasal, on the rearside of Amma Unavagam and he went to the occurrence place and recovered the white colour gunny bag containing 24 kg Ganja from A1. Remaining persons were found along with him. Therefore he arrested all the accused.

10. According to the prosecution and as per the finding of the learned trial judge in Para 36, the other accused were present at the scene of occurrence along with A1 and A1 gave a confession about the involvement of the appellant. It is not the case of the prosecution that they conspired and were found in possession of the contraband.

11. The simple confession of the co-accused is not sufficient to convict the appellant in the offence of grave nature. The Hon'ble Supreme Court in the case of ***Tofan Singh case*** and also in a cantena of judgments, has reiterated the principle that conviction on the basis of the confession of the co-accused is not legally maintainable.

12. Even as per prosecution case, no recovery was made from the appellant. The recovery was made only from A1. In the absence of any concrete material to prove the presence of the appellant at the occurrence place with the knowledge that A1 possessed Ganja, this Court is not inclined to convict the appellant under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. According to PW2 the occurrence place is the main road and it is a over crowded area and the same was admitted by him. The relevant portion of his evidence is as follows:

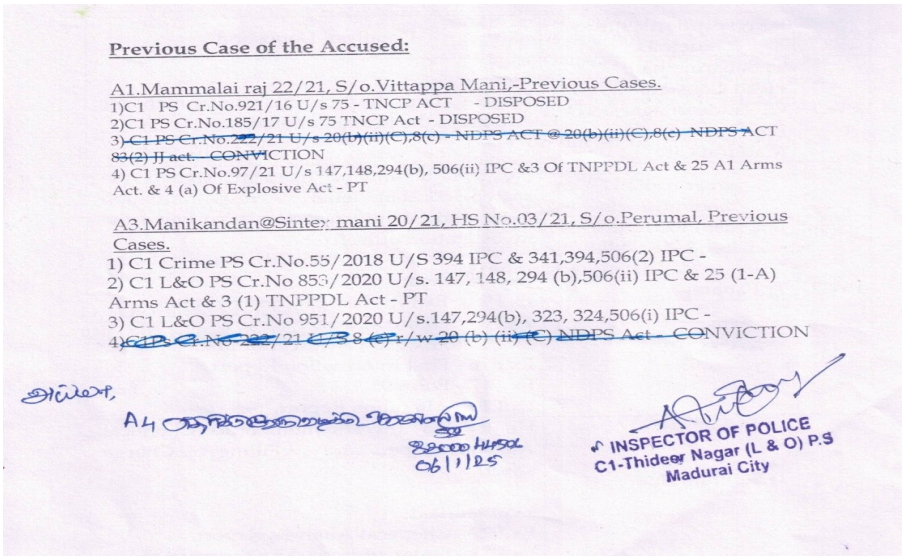
> *''எங்கள் காவல்நிலையம் தெற்கு வடக்காக போகும் ரோட்டில் வலது புறம் உள்ளது. காவல்நிலையம் ரோட்டின் கிழக்கு பக்கமாக உள்ளது என்றால் சரிதான் மேற்படி ரோட்டிற்கு மேற்கு புறம் அம்மா உணவகம் உள்ளது என்றால் சரிதான் அதனருகில் அங்கன்வாடி மையம் உள்ளது என்றால் சரிதான். அங்கன்வாடிக்கும் அம்மா உணவகத்திற்கும் தென்புறமாக கிழமேலாக ஒரு ரோடு மேற்கு நோக்கி செல்கிறது என்றால் சரிதான்.''*

13. It is true that there is no need to examine independent witness to prove the recovery if the evidence of the police witnesses is cogent and trustworthy. To assess the trustworthyness of the police witness it is desirable to see whether there is basic compliance of the procedure. In the case of the recovery, atthachi is a vital document. To prove the presence of the appellant at the scene of occurrence, the officer should have obtained the signature of the appellant in the athachi/recovery mahazar, Ex.P.4. The

absence of signature in the athachi/recovery mahazar, creates a doubt in the mind of this Court with respect to the version of P.W.1 and P.W.2 as regards the involvement of the appellant in this case. In the atthachi, signature of the accused has to be obtained. If the case of the prosecution is that the accused refused to sign in the atthachi it should be proved through other means. In these type of cases, more particularly if recovery is made in the heart of the city some independent witnesses ought to have been joined. It is settled principle that in the case of offence of grave nature, the initial burden of the prosecution is heavy. It is the duty of the prosecution to prove the presence of the appellant and his conscious possession, to invoke the presumption under Section 54 of the NDPS Act. In the peculiar circumstances of the present case, only on the basis of the evidence of police witnesses without any connecting material to prove the appellant's presence and his conscious and joint possession of the said contraband, more particularly without any recovery from the appellant and on the basic of recovery from A1 alone, the conviction and sentence imposed against the appellant under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act as per the finding in Para 36 of the trial court judgment is not legally substainable.

14. The learned Additional Public Prosecutor submitted that the appellant has previous bad antecedents and therefore, the appellant is not

entitled to acquittal. This Court is not inclined to consider the said submission for the reason that when there is no material to connect the appellant with the present case, claim that he has previous antecedents will not be sufficient to convict him as held by the Hon'ble Supreme Court in the case of ***Rajendra Pralhadrao Wasnik v. State of Maharashtra] 1977(3)SCC268 and Ram Lakhan Singh v. State of U.P*** *reported in* ***2019 (12) SCC 460***. Apart from the above legal principle, this court perused the particulars of the previous bad antecedents submitted by the respondent police. There is no previous case against the appellant. A1 and A3 alone have previous cases and same was admitted by the respondent police officer and relevant portion is as follows:



Previous Case of the Accused:

A1.Mammalai raj 22/21, S/o.Vittappa Mani,-Previous Cases.
1)C1 PS Cr.No.921/16 U/s 75 - TNCP ACT - DISPOSED
2)C1 PS Cr.No.185/17 U/s 75 TNCP Act - DISPOSED
3) ~~C1 PS Cr.No.22/21 U/s 20(b)(ii)(C),8(c) - NDPS ACT @ 20(b)(ii)(C),8(c) NDPS~~ ACT ~~83(2) IJ act. - CONVI~~CTION
4) C1 PS Cr.No.97/21 U/s 147,148,294(b), 506(ii) IPC &3 Of TNPPDL Act & 25 A1 Arms Act. & 4 (a) Of Explosive Act - PT

A3.Manikandan@Sintey mani 20/21, HS No.03/21, S/o.Perumal, Previous Cases.
1) C1 Crime PS Cr.No.55/2018 U/S 394 IPC & 341,394,506(2) IPC -
2) C1 L&O PS Cr.No 853/2020 U/s. 147, 148, 294 (b),506(ii) IPC & 25 (1-A) Arms Act & 3 (1) TNPPDL Act - PT
3) C1 L&O PS Cr.No 951/2020 U/s.147,294(b), 323, 324,506(i) IPC -
4) ~~C1 PS Cr.No.22/21 U/S 8 (c) r/w 20 (b) (ii) (C) NDPS Act~~ - CONVICTION

A4 ...
06/1/25

INSPECTOR OF POLICE
C1-Thideer Nagar (L & O) P.S
Madurai City

15. Hence, the submission of the learned Additional Public prosecutor that the appellant has previous cases is not correct. Therefore, the appellant

is entitled to acquittal.

16. In this case, from a reading of the evidence of P.W.4, P.W.2, this Court holds that the compliance of Section 42 of the NDPS Act is not proved beyond reasonable doubt. P.W.2 in his evidence stated that he has not produced the general diary which contained the recording of the information to the Court. According to him, the hand written information was not produced and the relevant evidence is as follows:

"கைப்பட எழுதப்பட்ட இரண்டு பிரதிகள் நீதிமன்றத்தில் தாக்கல் டிசய்யப்படவில்லை என்றால் சரிதான்"

17. In the Court, only the typed copy of the recording of information was produced under Ex.P9. According to the accused, Ex.P9 is a fabricated one as the same was not mentioned in the immediate report sent under Section 57 of the Act and the officer who is said to have received the same, namely P.W.4, is not cited as a witness in the final report and he was subsequently added as a witness by filing a separate memo. This Court normally would not find fault with the said procedure. But in this case, it is a material circumstance to suspect the case of the prosecution that Section 42 was complied with. The basic requirement in the NDPS cases, more particularly in the case of the commercial quantity, is that, a strict

compliance of the mandate of Section 42 has to be followed. More particularly, in this case, accused has come forward with the plea of false case. In the FIR Ex.P16, alteration report Ex.P19, and the report under Section 57 marked as Ex.P18, it is the specific case of P.W.2 that he proceeded towards the occurrence place after getting permission from P.W.4. For better appreciation, the following particular portion of the above all documents are extracted hereunder:

> "இன்று 26.06.2021ம் தேதி 11.30 மணிக்கு சார்பு ஆய்வாளர் பணராஜ் ஆகிய நான் நிலைய அலுவலில் இருந்த போது எனது இரகசிய தகவலாளி நேரில் ஆஜராகி சொன்ன தகவலை பொறுப்பு காவல் ஆய்வாளர் அவர்களுக்கு தகவல் தெரிவித்து 11.40 மணிக்கு பொதுநாட்குறிப்பில் பதிவு செய்தும் காவல் ஆய்வாளர் அவர்கள் எழுத்து மூல உத்தரவுப்படி"

18. P.W.2 in his evidence deposed that "தகவலில் பொறுப்பு ஆய்வாளர் தான் கையெழுத்து போட்டுள்ளார் என்றால் சரிதான் அவர் பெயர் லிங்கபாண்டி. அவர் சுப்பிரமணியபுரம்காவல்நிலையம் ஆய்வாளர்". But P.W.4 has given false evidence before the trial Court deposing as if he has acknowledged the information under Ex. P16. According to PW.2, Inspector Lingapandi had signed in the information received under section 42 of the NDPS Act as incharge officer. In order to safeguard P.W.2, PW.4 has deposed that he had subscribed his signature in Ex.P9. This indicates that P.W.4 gave false evidence before the trial Court. From the above circumstances, this Court holds that the

prosecution not only failed to prove the compliance of Section 42 but has also maneuvered to get conviction by leading false evidence. Therefore this Court is inclined to accept the argument of the learned counsel for the appellant that false case was registered against the appellant.

19. Since P.W.2, P.W.3 and P.W.4 conspired together to get the conviction by hook and crook by giving false evidence before the trial Court, this Court is taking serious view of this matter. According to P.W.2. he wrote the information by hand but Ex.P9 is typed copy. Further evidence of P.W.2 is that one "Mr. Lingapandi had signed in the Ex.P9". But, according to P.W.4, he signed the information. P.W.3 the investigation officer filed the memo before the Court to add P.W.4 as additional witness without including his name in the original final report. Therefore, this Court sees a unholy alliance between the witnesses to secure conviction based on false evidence. The appellant is in custody from the date of the arrest without bail. Therefore, in this case the appellant deserves to get suitable compensation from the P.W.2, P.W.3 and P.W.4 and the same is quantified as 10 lakhs payable by them jointly.

20. This Court also is very much concerned about giving of such false evidence and the same has to be dealt with seriously. Therefore, this Court

directs the Direct General of Police, Chennai to conduct enquiry about the conduct of the P.W.2, P.W.3 and P.W.4 after giving opportunity to them and take necessary action if circumstances warrants and the said enquiry shall be completed within one month from date of receipt of copy of this order. Fair investigation and fair trial is a fundamental right of the accused. The Hon'ble Supreme Court in a number of cases has held that it is the duty of the investigation agency and prosecution agency to disclose the true facts before the Court without any concoction. Since this Court arrives at the above finding of false case on the material available on record and directs the higher officials to conduct enquiry, The authority is directed to conduct independent enquiry without being influenced by the finding in this judgment. This Court hopes that the authority would conduct the enquiry in a dispassionate manner and arrive at a fair conclusion.

21. Accordingly, the appeal is **Allowed** on the following terms:

20.1.The judgment passed by the learned I Additional Special Court for NDPS Act Cases, Madurai (FAC) in C.C.No.329 of 2021, dated 15.03.2023, is set aside.

20.2.The appellant is acquitted from all the charges made in C.C.No. 329 of 2021 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai (FAC).

20.3.Fine amount paid by the appellant shall be refunded to the appellant forthwith.

20.4. Bail bond executed by the appellant shall stand cancelled.

20.5. P.W.2, P.W.3 and P.W.4 are hereby directed to pay compensation of 10 lakhs jointly within one month from the date of the receipt of the copy of this order.

20.6. The Director General of Police is hereby directed to complete the enquiry within the stipulated time as mentioned above.

20.7. Registry is hereby directed to keep the records in safe custody till the conclusion of the enquiry as indicated above.

Consequently, connected Criminal Miscellaneous Petition stands closed.

15.10.2025.

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
dss/sbn

To:

1.The I Additional Special Court for NDPS Act Cases, Madurai (FAC),
Madurai.

2.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai.

3.The Inspector of Police,
Thideer Nagar Police Station, Madurai.

4.The Superintendent of Prison,
Central Prison, Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

6.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.

7. The Section Officer,
English Records Section,
Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

dss/sbn

Crl.A.(MD).No.351 of 2023

15.10.2025