

**Nagaraj Vs. State Rep.By Its**

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**SooperKanoon Citation :** [sooperkanoon.com/65076](http://sooperkanoon.com/65076)

**Court :** Chennai

**Decided On :** Sep-02-2015

**Judge :** The Honourable Mrs.Justice S.Vimala

**Appellant :** Nagaraj

**Respondent :** State Rep.By Its

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 02.09.2015 CORAM THE HONOURABLE MRS.JUSTICE S.VIMALA Criminal Appeal (MD)No.305 of 2014 Nagaraj ..Appellant -versus State rep.by its The Inspector of Police, NIB-CID, Theni Police Station, Theni.

Crime Nos.74 to 80 of 2004..Respondent Appeal filed under Section 374 of the Criminal Procedure Code, against the judgment dated 12.11.2013 in C.C.No.590 of 2004 on the file of the Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai.

!For appellant : Mr.S.Gokul Raj ^For respondent : Mr.P.Kandasamy, Govt.Advocate (Crl.Side) :

**JUDGMENT**

Reserved on : 27.08.2015 Delivered on : 02.09.2015 The appellant herein is the fifth accused in the case registered by the respondent against him under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985

(?.NDPS Act?.

in short).stating that the appellant along with seven others were found to be each in possession of ganja weighing 21 gm., and that the possession was without any permit or license and hence it is a punishable offence.

2.The Additional District Judge, Madurai (Special Court for NDPS Act cases).framed charges against the appellant which was the same as that of the other accused persons in C.C.No.590 of 2004 and the appellant denied the charges.

3.During the couRs.of trial, A-7 died.

4.After perusal of oral and documentary evidence, the appellant and five others were found guilty under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act and each of them were ordered to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh, in default to undergo 1 year rigorous imprisonment.

5.Excepting this appellant, rest of them filed the appeal against the judgment of the Special Court in CrI.A.Nos.338 of 2013, 345, 383 and 35 of 2014.

This Court allowed these appeals on 30.04.2015 and all the appellant in the above referred cases were acquitted of the charges.

6.Under such circumstances, the appeal filed by this appellant who is one among the similarly placed persons in the above referred cases, has been taken up for hearing.

7.The fiRs.contention of the learned counsel for the appellant is that the charges framed against all the accused persons, including the appellant, were one and the same and therefore, the benefit of acquittal given to the rest of the accused persons in the cases referred supra, would be applicable to this accused person also and therefore the benefit of acquittal would be automatic, having regard to the same set of allegations made against each of the accused persons.

In support of the same, the judgment of this Court in the appeals referred supra has been produced.

8.The allegation against the accused persons 1 to 6 and the deceased (Palani) is that they were found in possession of 21 Kgs.of Ganja each without any permit or license on 26.05.2004 at 6.00 hours at Madurai- Rajapalayam Road.

9.The prosecution had examined 5 witnesses, marked 28 documents and exhibited 21 material objects in order to substantiate the charges against the accused persons.

10.The main contention of the learned counsel for the appellant revolves around: (a)the violation of the provisions of Sections 42, 50 and 57 of the NDPS Act; (b)non-examination of independent witnesses with regard to the arrest of accused persons and seizure of contraband from them; (c)the variation in the quantity of samples seized at the place of seizure and the samples received in the Lab.

11.So far as the non-compliance of legal provisions are concerned, it is the contention of the learned counsel for the accused that it is mandatory to follow those provisions of law and it is imperative to have been followed, especially when a higher quantity of narcotic drugs is alleged to have been recovered for which the punishment is serious and higher.

On the other hand, it is contended by the learned Special Public Prosecutor that strict compliance of those provisions are not contemplated and it is enough if those provisions had been substantially complied with.

As contended by the learned counsel for the respondent, it is enough if the conditions stipulated in those provisions are substantially complied with.

12.Relying upon the decision reported in AIR 2001 SC3190 in Shaja Abraham versus State of Kerala, it is contended that when copies of FIR and other documents were duly sent to superior officer, then it amounts to substantial compliance of Section 57 of the NDPS Act and therefore, the accused cannot have any grievance of violation.

12.1.Section 57 of the NDPS Act is reproduced hereunder for convenient reference: ?57.Report of arrest and seizure.-Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such

arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.?

13. Whether there was compliance, substantial compliance / strict compliance of the provisions of Section 57 of the NDPS Act by the investigating officers is the main issue canvassed in this case.

14. P.W.1-Head Constable and P.W.4-Sub-Inspector of Police are the main witnesses to speak about the arrest of accused persons, seizure of contraband and preparation of mahazaRs. According to both of them, the arrest and seizure took place only under the supervision of the Inspector of Police.

This testimony stands falsified by the evidence of P.W.5-Inspector of Police, who denied knowledge of the arrest and seizure.

Therefore, it is clear that the foundational facts are shaky in this case and it is not proved.

When the arrest and seizure itself is made doubtful by the evidence of the prosecution witnesses, the contention that there had been substantial compliance of the statutory provisions, is not correct and therefore it cannot be accepted.

15. The important contention of the learned counsel for the revision petitioner is that the informer himself is stated to be a person who identified the accused persons, then no secrecy is involved in disclosing the informer to the Court and the non-examination of the informer is fatal so far as this case is concerned.

This contention should be accepted, as the informer himself is in the limelight right from the time of identifying the accused persons.

Only when there is a necessity of keeping the secrecy of the informer, the prosecution would have the difficulty of examining the informer, as they would be under a duty to maintain the secrecy of the details of informer.

No such difficulty can be pleaded in this case, as the informer is made known to others while identifying the accused.

Therefore, the non-examination of the informer is fatal to the case of the prosecution and this contention is well-founded and there is no reason as to why the informer should not have been examined before the Court.

16.As rightly contended, there had been unaccounted variation between the quantity of contraband which was seized in the place of occurrence and which was sent to the laboratory.

The contention that each of them were in possession of 21 Kgs.of Ganja as if they have taken it from a manufacturing / selling industry, is highly artificial and whenever a doubt is entertained it is for the prosecution to clarify the doubt with sufficient proof.

The prosecution miserably failed in doing so.

Under such circumstances, when there is no evidence to find the accused guilty and the findings are perverse, based on no evidence, the conviction and sentenced passed by the Trial Court, cannot be sustained.

17.Moreover, the learned Special Public Prosecutor submitted that the judgment of acquittal passed by this Court dated 30.04.2015 is not under challenge before any Court and that, therefore the judgment of this Court in the connected appeal has attained finality.

Yet, this Court has considered the merits of the case also.

18.In the result, the appeal is allowed and the conviction and sentence of imprisonment and fine, imposed on the accused / appellant by the judgment of the Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai in C.C.No.590 of 2004 dated 12.11.2013, stands set aside.

Bail bonds if any executed by the accused / appellant stand discharged.

To 1.The Inspector of Police, NIB-CID, Theni Police Station, Theni.

2.The Additional District Judge for Principal Special Court for NDPS Act Cases, Madurai.

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

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