

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.32 OF 2021

Between:

Sri Dharavath Sathish

... Petitioner/Accused No.2

And

The State of T.S,
Rep. by its Public Prosecutor ,
High Court of T.S, Hyderabad,(Through
P.S. Bhadrachalam Town)

...Respondent/Complainant

Criminal Appeal No.76 OF 2021

Between:

Sri Amgoth Nagaraju

...Petitioner/Accused No.1

And

The State of T.S,
Rep. by its Public Prosecutor,
High Court of T.S, Hyderabad,(Through
P.S. Bhadrachalam Town)

...Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 08.09.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 32 of 2021

% Dated 08.09.2023

Sri Dharavath Sathish

... Petitioner/Accused No.2

And

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Rep. by its Public Prosecutor ,
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...Respondent/Complainant

! Counsel for the Petitioner: Sri K.Prabhakar Rao & P.Venkanna

^ Counsel for the Respondents: Sri Public Prosecutor

>HEAD NOTE:

? Cases referred

1.2011(1) ALD (CrI.) 285 (SC)

2.2009 (2) ALD(CrI.) 41 (SC)

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.32 & 76 of 2021****COMMON JUDGMENT:**

Criminal Appeal No.32 of 2021 was filed by the Accused No.2 and Criminal Appeal No.76 of 2021 was filed by the Accused No.1 questioning the conviction recorded by the Special Sessions Judge for trial of cases under NDPS Act-cum-I Additional District and Sessions Judge, Khammam, dated 27.01.2021, in SC.NDPS no.3 of 2018, convicting and sentencing the accused Nos.1 and 2 to undergo Rigorous Imprisonment for a period of ten years each and also to pay a fine of Rs.1 lakh each, for the offence punishable under Section 8(c) r/w. Section 20(b) of the NDPS Act, 1985.

2. Since the appellants in both the appeals are challenging their conviction in SC NDPS.No.3 of 2018, both the appeals are heard together and disposed off by this common Judgment.

3. Briefly, the case of the prosecution is that P.W.7 along with his staff was conducting check at CRPF Camp Office at Kunavaram road, Bhadrachalam. One car bearing No.TS 29T 0556 was stopped and in the said car, the appellants were present. The car was checked and 19 plastic packets of ganja were found in the dickey. Thereafter, P.W.7 informed the Tahsildar about the vehicle being stopped and also requested to depute two

witnesses, who are examined as P.Ws.2 and 3, Village Revenue Officers. 19 Ganja packets were seized along with car bearing No.TS 29T 0556 under cover of panchanama. Thereafter, the accused were arrested and remanded to judicial custody. Samples were drawn in the presence of Magistrate on 01.09.2018 and forwarded to the FSL for analysis. Ex.P6 is the order dated 01.09.2018 passed by the Magistrate certifying the correctness of the inventory Ex.P5 photographs, Ex.P4 samples of ganja which were taken in the presence of Magistrate. Ex.P8 is the FSL report dated 17.10.2019 in which samples were found to be ganja, which is narcotic drug.

4. Learned Sessions Judge having examined P.Ws.1 to 7 marked Exs.P1 to P9 and MOs.1 to 9 which are 19 pockets of ganja that were seized. Learned Sessions Judge found that these appellants were in possession of ganja and accordingly convicted the appellants.

5. Learned counsel appearing for the appellants would submit that the alleged incident occurred on 01.09.2018 whereas the FIR and the Panchanama Ex.P1 and P2 were sent to the concerned Magistrate with a delay of 10 days. In Ex.P9-requisition which was made to the Mandal Tahasildar reflects that one car bearing No.AP

20 AK 8814 was stopped. However, as seen from the panchanama, the car which was stopped was TS 29 T 0556.

6. Learned Counsel further submitted that when there was information that the Police sent Ex.P9, the same should have been reduced into writing and informed to the Senior Officers in accordance with Section 42 of the NDPS Act. He relied on the Judgment of Honourable Supreme Court in ***State of Karnataka v. Dondusa Namasa Baddi***¹, wherein the Honourable Supreme Court held that the provision under Section 42(2) of the NDPS Act, 1985 should be complied with and the documents should reflect the said compliance. Merely stating that the information was provided to superior officers will not suffice.

7. The Judgment reported in ***U.O.I v. Bal Mukund and others***², the Honourable Supreme Court found that when some secret information was received, the said information was neither reflected in writing nor forwarded to the superior officers as required under Section 42 of the NDPS Act. In the absence of meeting mandatory requirement under Section 42, the Honourable Supreme Court allowed the appeal and set aside the conviction.

¹ 2011 (1) ALD (CrI.) 285 (SC)

² 2009 (2) ALD (CrI.) 41 (SC)

8. Learned Public Prosecutor would submit that samples were drawn in the presence of Magistrate and they are found to be ganja. No error is committed by the learned Sessions Judge in convicting the appellants.

9. As seen from Ex.P9 it is specifically mentioned that there was reliable information that the car bearing No.AP 28 AK 8814 was stopped and ganja was found. However, from Ex.P1 and evidence of witnesses, the car which was stopped was TS 29 T 0556. Though in the evidence of PW7-Investigating Officer he stated that said car was seized, no document was filed before the trial Court to show that any car was deposited before the Court. In the evidence of PW7, he specifically stated that car bearing No.TS 29 T 0556 was searched and seized along with 19 packets of ganja. The discrepancy of different car numbers and the reason as to why the car was not deposited before the Court, is not explained by the prosecution. It is significant in view of the following discussion.

10. In the evidence of PW7, he stated that the appellants were produced for judicial custody on 12.09.2018. However, in Ex.P6, it is stated that the appellants were remanded on 01.09.2018. The copy of Ex.P6 which is the medical inventory and making request

to collect samples were made on 10.09.2018. On the same day, FIR and panchanama Exs.P1 and P2 were filed before the concerned Magistrate. In Ex.P2 FIR it was specifically endorsed by the learned Magistrate that the FIR was received with Remand Report and signed on 10.09.2018. The documents reflect that the appellants were remanded on 01.09.2018. In Ex.P2 it is mentioned that the FIR was received on 10.09.2018 along with Remand Report. In the evidence of PW7, he asserted that the appellants were remanded on 10.09.2018. There is no explanation for such discrepancy which is glaring.

11. Ex.P9 letter to Tahsildar mentions about specific information but the car number differs from which 19 packets of ganja was seized. In the letter Ex.P9 it was specifically mentioned that on reliable information Car No. AP 28 AK 8814 was stopped and Ganja was found. In the event of having information, the prosecution ought to have complied with Section 42 of the NDPS Act by informing the Superior Officers about the information regarding accused, contraband or the vehicle. No such documents are produced by the prosecution. Further the car shown as seized is car No. TS 29 T 0556.

12. In view of the discrepancies in the prosecution case, when the prosecution is not able to show as to on which date the accused was remanded whether it was 01.09.2018, 10.09.2018, 12.09.2018 which dates appeared in the evidence and documents and also for the delay in sending the complaint to the Police on 10.09.2018, there arises any amount of doubt in the prosecution case.

13. For the aforesaid reasons, benefit of doubt is extended to the appellants.

14. Accordingly, both the Criminal Appeals are allowed and the appellants /A1 & A2 in the both the appeals are acquitted. The conviction recorded by the Special Sessions Judge for trial of cases under NDPS Act-cum-I Additional District and Sessions Judge, Khammam, in SC.NDPS No.3 of 2018, dated 27.01.2021 is hereby set aside. Since the appellants are on bail, their bail bonds shall stand cancelled.

Consequently, miscellaneous petitions, if, pending, shall stands closed.

K.SURENDER, J

Date: 08.09.2023

Note: LR copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.32 & 76 of 2021

Date: 08.09.2023.

kvs