2025 INSC 1417

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 259 OF 2025
(Arising out of SLP (Crl.) No. 52102 of 2024)

JOTHI @ NAGAJOTHI **... APPELLANT**

VERSUS

THE STATE, REP. BY THE INSPECTOR OF POLICE

... RESPONDENT

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. This is an appeal challenging the judgment dated 27.06.2024 passed by the High Court of Judicature at Madras in Crl.A. No. 125 of 2021, whereby the conviction and sentence imposed upon the appellant under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "*the NDPS Act*") were affirmed.

2. The Trial Court, by judgment dated 01.02.2021 in C.C. No. 15 of 2020, convicted the appellant and imposed 10 years' rigorous imprisonment and a fine of ₹1,00,000/- for each count (sentences running concurrently). The High Court upheld the same.

3. The case of the prosecution was that on 21.09.2019, PW-1 (Sub-Inspector) received secret information that ganja was being transported on a two-wheeler bearing TN-03-M-0585. PW-1 reduced this information into writing, informed PW-5 (Inspector) and proceeded with two constables, PW-2 and PW-3.

4. The appellant (A-2) and her husband (A-1) were intercepted. After informing them of their rights under Section 50 of the NDPS Act, the police searched the vehicle and seized 23.500 kg of ganja, along with ₹21,140/-. Two samples of about 50g each were drawn, sealed and marked as 'S-1' and 'S-2'. PW-1 also recorded the confession of A-1 at the spot.

5. After reaching the police station, PW-1 submitted a report to PW-5 under Section 57 of the NDPS Act. On receiving the report, PW-5 registered the F.I.R. No. 462/2019 dated 21.09.2019 for offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act and

prepared the intimation memos. A-1 and A-2 were sent for remand and PW-5 took up the investigation.

6. During investigation, PW-5 forwarded the seized samples to the Court along with a requisition for chemical analysis. The samples were received by PW-6 (Scientific Officer) through PW-4. PW-6 analysed the sample, detected cannabinoids and furnished the report.

7. Thereafter, PW-5 recorded the statements of PW-6 and the remaining members of the raiding team under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred as "*the Cr.P.C*"). The seized cash was deposited to the Reserve Bank of India. After completing the investigation, PW-5 filed the final report against A-1 and A-2 for the aforesaid offences.

8. The prosecution examined 6 witnesses. A-1 and A-2 were questioned under Section 313(1)(b) of the Cr.P.C., during which they denied all incriminating circumstances.

9. The trial court found A-1 and A-2 guilty under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the NDPS Act, convicted them and imposed 10 years' rigorous imprisonment and a fine of ₹1,00,000/- for each count (sentences running concurrently).

10. Aggrieved thereby, A-1 and A-2 approached the High Court, which held that the Trial Court has rendered proper findings on the basis of the materials placed by the prosecution to prove the case against A-1 and A-2. Accordingly, the criminal appeal filed by A-1 and A-2 was dismissed, confirming the conviction and sentence imposed by the trial court.

11. Aggrieved by the conviction and sentence, the appellant (A-2) has filed the present appeal.

12. Learned counsel for the appellant contends that the prosecution case suffers from multiple infirmities. *First*, it is urged that the seizure took place in a residential locality containing about 50-60 houses, yet no independent witness was secured and only police witnesses attested the mahazar, thereby casting doubt on the genuineness of the seizure.

13. *Secondly*, it is submitted that the representative samples were drawn at the spot itself, contrary to the mandate of Section 52-A of the NDPS Act and without the presence or certification of a Magistrate, rendering the samples legally infirm. Reliance is placed on ***Simranjit Singh v. State of Punjab (2023 SCC OnLine SC 906)***

and ***Yusuf @ Asif v. State (2023 SCC OnLine SC 1328)*** to urge that sampling at the spot vitiates the prosecution case.

14. *Thirdly*, learned counsel pointed to the absence of the markings 'S-1' and 'S-2' on the sample packets upon removal of labels, thereby questioning the identity and integrity of the samples sent for chemical analysis.

15. *Fourthly*, it is argued that there was non-compliance with the statutory requirements under Sections 52-A(2) and 52-A(4) of the NDPS Act, which vitiates the evidentiary value of the samples and undermines the prosecution case.

16. Thus, learned counsel for the appellant submitted that the impugned judgment is liable to be set aside.

17. In the alternative, it was urged that the appellant was only 24 years of age at the time of the incident, is a first-time offender with no prior criminal antecedents and is the sole caregiver of her minor child. On these mitigating considerations, learned counsel pleaded for remission or, at the very least, a reduction of the sentence to the period already undergone, which presently stands at over 5 years and 9 months.

18. *Per contra*, learned counsel for the State submitted that all alleged discrepancies were minor, thoroughly explained and incapable of discrediting the prosecution case which stood firmly proved by the consistent testimony of official witnesses. The integrity of the samples was never compromised and the High Court had rightly rejected the appellant's contentions.

19. We have considered the rival submissions and perused the material available on record.

20. The contention of the appellant with regard to the absence of independent witnesses has been examined in detail by the High Court, noting that PWs 1-3 consistently deposed that no persons were present in the vicinity at the time of seizure, despite the presence of houses and no suggestion was made to the contrary in cross-examination. The relevant paragraph of the impugned judgment reads as under:

> *"23. It is to be pointed out that it is the consistent view of the courts that non-examination of independent witnesses cannot be a ground to doubt the prosecution version so long as the witnesses, who have been examined have deposed in unison. As stated above, P.W.s 2 and 3 have corroborated the evidence of P.W.1 on all material particulars. In fact, P.W.s 2 and 3 have deposed that though at a distance of 50 mtrs., there are houses, yet no person was available and,*

therefore, P.W.s 2 and 3 were made witnesses to the seizure, it is not the case of the defence/ appellants that the locality where the vehicle of the appellants was intercepted, there was frequent movement of pedestrians or vehicles so that there would have been no difficulty to obtain signatures from independent witnesses. There is no suggestion made in this regard to the witnesses by the defence at the time of cross examination and in the absence of any suggestion and eliciting a response, the mere non-examination of independent witnesses or attesting of the mahazar by the official witnesses could form the basis to doubt the prosecution version. Therefore, the said contention deserves to be rejected."

21. This Court has consistently held that the non-examination of independent witnesses is not, by itself, fatal to the prosecution, particularly in prosecutions under the NDPS Act where operations often take place under challenging circumstances. In ***Surinder Kumar v. State of Punjab (2020 (2) SCC 563)***, this Court reiterated that the mere absence of independent witnesses does not lead to the conclusion that the accused has been falsely implicated. Referring to ***Jarnail Singh v. State of Punjab ((2011) 3 SCC 521)***, the Court underscored that the testimony of official witnesses cannot be discarded solely on the ground of their official status and that their evidence must be assessed on its own merits like that of any other witness.

22. In the present case, upon careful evaluation, the evidence of the official witnesses stands out as consistent and coherent. Their depositions corroborate each other on all material particulars and no material has been brought out in cross-examination to cast doubt on their credibility. The absence of independent witnesses, therefore, cannot be said to weaken the prosecution case in any manner.

23. The appellant's primary submission is that the representative samples ought to have been drawn only before a Magistrate in terms of Section 52-A of the NDPS Act and that sampling at the spot itself renders the entire prosecution void. This contention is legally untenable. In ***Bharat Aambale v. State of Chhattisgarh, (2025) 8 SCC 452***, this Court has comprehensively clarified the scope, purpose and effect of Section 52-A. Most significantly, paragraphs 56.5 and 56.6 of the said judgment make it clear that mere non-compliance or delayed compliance with Section 52-A is not fatal unless the irregularity creates discrepancies affecting the integrity of the seized substance or rendering the prosecution case doubtful. Equally, even where some procedural lapse is shown, if the remaining oral or documentary evidence inspires confidence regarding the seizure and conscious possession, the conviction may still be upheld.

24. Applying these principles to the present case, the appellant has failed to lay any foundational material to suggest that the sampling process was unreliable or that the integrity of the samples stood compromised. On the contrary, the record demonstrates a clear and unimpeached sequence of events: (i) the samples were drawn at the spot in the presence of PWs 1 to 3, (ii) the sample packets were duly sealed with signatures and seizure details, (iii) the seized material, along with the samples, was produced before the Magistrate, and (iv) pursuant to the judicial order dated 20.10.2019, sample 'S-1' was forwarded to the Forensic Science Laboratory while 'S-2' was retained in judicial custody. The Scientific Officer (PW-6) affirmed that the seal on the packet received for analysis was intact and bore the correct identifying particulars.

25. The appellant's contention that the markings 'S-1'/'S-2' were absent upon removal of labels also lacks merit. PW-1 explained that markings had been made and any fading could be attributed to normal handling over time. More importantly, the Magistrate's order dated 20.10.2019 itself expressly refers to the sample packets as 'S-1' and 'S-2', conclusively establishing their identity and dispelling

any doubt. The Scientific Officer (PW-6) further confirmed that the sample received by the Laboratory corresponded to the seizure.

26. In addition, the chain of custody in the present case remains clear and continuous. At no stage has any evidence been brought out to indicate tampering, substitution or mishandling. The forensic report confirms the presence of cannabinoids in the sample, which stands in complete harmony with the seizure.

27. In these circumstances, even assuming some deviation from the ideal procedure envisaged under Section 52-A, such irregularity does not go to the root of the matter nor does it create any reasonable doubt regarding the authenticity of the seized contraband or the identity of the samples analysed. The prosecution has demonstrated substantial compliance with the statutory requirements and the integrity of the material evidence stands fully preserved. Accordingly, the appellant's contention founded on non-compliance with Section 52-A is rejected.

28. The decisions in ***Simranjit Singh (supra)*** and ***Yusuf @ Asif (supra)*** are distinguishable on facts, as both involved serious doubts regarding identity of samples, broken seals and unexplained

discrepancies. None of those infirmities have been proved by the appellant in the present case.

29. The reduction in weight (from "about 50g" to 40.6g) is sufficiently explained by natural drying and loss of moisture, a fact also recorded by PW-6 in the Analysis Report, which notes that the sample contained dry, broken fragments. The High Court rightly held that minor variations in weight, particularly where the sample quantity is described as "about", do not affect the identity or integrity of the sample. The relevant observations of the High Court read as follows:

> *"31. The deposition of P.W.5 proves that he received a quantity of 40.6 grams in one sealed cover from the court, as evidenced by Ex.P-9. The letter of P.W.6, which has been annexed with Ex.PP-9 also reveals that two samples of about 50 grams each were taken for the purpose of chemical analysis. Therefore, not only there is corroboration, but there is not too much variance in the quantity sent for chemical analysis and, therefore, the contention that the samples, which were alleged to have been sent were not the ones that were drawn out of M O.3 does not merit acceptance. The minor discrepancy in the quantity does not have much relevance, moreso, when it is the specific case of the prosecution that about 50 grams was taken as sample and not exactly 50 grams.*
>
> *32. Further, it should also not be lost sight of that the initial seizure and recovery was made on 21.09.2019 and, thereafter, on 30.10.2019, on the orders of the court, one of the sample packet, viz., S-1 was sent for chemical analysis.*

The time lapse between 21.9.2019 and 30.10.2019 also has to be taken into consideration while the weight of the sample is considered as the freshness of the sample on 21.9.2019 would have waned by 30.10.2019, as even the recording of P.W.5 in Ex.P-9 shows that the leaves along with the seeds were found broken, which clearly shows that the samples, which were received by P.W.5 were dry. The seizure had been made on 21.9.2019 and the sample was sent on 30.10.2019 and during the interregnum 40 day period, the sample would have dried and the loss of moisture in the sample would have been the cause of reduction in weight of the sample from about 50 grams to 40.06 grams Therefore, the reduction in weight, not being too enormous, the decision in Rojesh Jagdamba Avasthi case would not be of any assistance to the appellants. Further, even in the said decision, the Supreme Court had held that minor discrepancies in the weight could not be given too much weightage so long as the discrepancy in the weight is not too enormous. Therefore, the contention of the appellants with regard to discrepancy in weight, creating a doubt with regard to the samples does not merit acceptance."

30. This Court, in ***Noor Aga v. State of Punjab & Anr. ((2008) 16 SCC 417)***, has similarly observed in paragraph 98 that a slight difference in the weight of the sample is not so material as to undermine the prosecution case, and cannot by itself justify discarding otherwise reliable evidence.

31. Therefore, upon careful evaluation, the prosecution has proved, beyond reasonable doubt, that the appellant was in conscious possession of 23.500 kg of ganja, a commercial quantity. The minor

procedural irregularities pointed out do not affect the core of the prosecution case. The chain of custody remains intact and sampling and sealing have been sufficiently established.

32. The appellant urges this Court to consider her youth, lack of prior criminal history and responsibility towards her minor child. While we are not unmindful of the appellant's circumstances, the NDPS Act prescribes minimum mandatory sentences for possession of commercial quantity. The Court has no discretion to reduce the sentence below the statutory minimum under Section 20(b)(ii)(C) of the NDPS Act. Humanitarian considerations, though relevant for executive remission, cannot override statutory minimum punishment mandated by the legislature. Thus, no interference with sentence is permissible.

33. For the said reasons, we find no infirmity in the impugned judgment of the High Court. The conviction and sentence imposed by the Trial Court and affirmed by the High Court call for no interference.

34. The Criminal Appeal is accordingly dismissed.

35. The conviction and sentence of the appellant under Sections 8(c) r/w 20(b)(ii)(C) and 8(c) r/w 29(1) of the NDPS Act, as imposed

by the Trial Court in C.C. No. 15 of 2020 and affirmed by the High Court in Crl.A. No. 125 of 2021, are hereby upheld.

36. The appellant, however, is at liberty to pursue any remedy available in law for statutory remission before the appropriate authority.

37. Pending applications, if any, stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[VIPUL M. PANCHOLI]

New Delhi
December 11, 2025