

ITEM NO.29

COURT NO.8

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s).37214/2023

(Arising out of impugned final judgment and order dated 27-04-2023 in CRLAMD No. 292/2016 passed by the High Court Of Judicature At Madras At Madurai)

ILAMARAN

Petitioner(s)

VERSUS

THE STATE REP. BY THE INSPECTOR OF POLICE

Respondent(s)

(IA No.219626/2023-CONDONATION OF DELAY IN FILING and IA No.219623/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.219624/2023-EXEMPTION FROM FILING O.T. and IA No.219627/2023-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

Date : 30-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. M.P. Parthiban, AOR
Mr. S. Nagamuthu, Sr. Adv.
Mr. Priyaranjani Nagamuthu, Adv.
Mr. R. Sudhakaran, Adv.
Mr. T. Hari Haran Sudhan, Adv.
Mr. Bilal Mansoor, Adv.
Mr. Shreyas Kaushal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

2. Heard Mr. M. P. Parthiban, leaned counsel appearing for the petitioner. Assailing the judgment of conviction, the counsel would submit that there was violation of the provisions under Section 52A of the *Narcotic Drugs and Psychotropic Substances Act, 1985*, in the seizure of the contraband. This is because the seizure was not made in the presence of the Magistrate but only before a Gazetted Officer and that

too after 48 days after seizure was made on 12.03.2011. The Investigating Officer (PW-3) forwarded the sample only on 29.04.2011 to the Court. It is further pointed out that the white gunny bag which contained the contraband, was never produced.

3. In this context, Mr. Parthiban would rely on the recent judgment dated 13.10.2023 in *Yusuf @ Asif vs. State (Criminal Appeal No.3191/2023)*, where the following was recorded:-

"14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the magistrate had certified the inventory of the substance seized or of the list of samples so drawn.

15. In Mohanlal's case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purpose of the trial.

16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom

would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as whole stands vitiated."

4. Issue notice, returnable in six weeks.
5. At this stage, we may observe that in criminal SLPs coming from the State of Tamil Nadu, the cause title in the case does not reflect the State's name. This is not the practice for all other States in India, where the name of the State is specifically mentioned in the case's cause title. It is however pointed out by the Senior Counsel present in the Court that omission as above, is only by way of convention.
6. The authorities are accordingly directed to examine whether the cause title in the criminal appeals emanating from the State of Tamil Nadu, should also mention the name of the State, in the cause title of the cases.
7. We are informed that in the Madras High Court also, in the cause title in criminal matters, the State by name is not shown as a party. It is not discernible whether it is a matter of practice or of Rules. But the issue needs to be examined. Accordingly, we direct that the Registrar General of the Madras High Court should bring this order to the notice of the learned Chief Justice in order to consider whether appropriate amendments in the Rules should be made, if there is no other impediment, to avoid the afore-noted omission in the cause title of cases.
8. The Registry to forward a copy of this order to all concerned.

[DEEPAK JOSHI]
COURT MASTER

[KAMLESH RAWAT]
ASSISTANT REGISTRAR