

IN THE COURT OF JUDICIAL MAGISTRATE No.1, POONAMALLEE

PRESENT: Tmt.M.AMUDHA, B.A, B.L(Hons), L.L.M.,

Judicial Magistrate No.1, Poonamallee.

Thursday, the 19th day of December 2024

C.C.No. 337 of 2024

(CNR No.250035012024)

State Represented by

The Inspector of Police,

R – 9 Valasaravakkam, Police Station,

Chennai.

Crime No.164 of 2024.

...Complainant

Vs

John DavidRaj, aged 23 years,

S/o. Penni,

No. 11, Kannammal Nagar, 3rd St,

Valasaravakkam,

Chennai – 87.

...Accused-1

Manikandan @ Akash @ Thavattai, aged 20 years,

S/o. Penni,

No. 12, Kalaingar St,

Valasaravakkam,

Chennai

...Accused-2

This case was taken on file by this court on 24.07.2024 and came before this court for final hearing on 17.12.2024 in the presence of Assistant Public Prosecutor representing the state and in the presence of Esaki Pandy, Advocate representing for

accused and upon perusal of the records and hearing both the sides, and having stood over for consideration till this day this court delivered the following:

JUDGMENT

Case Summary

i.	The period of remand of the accused	-		
ii	The date of filling of the complaint/final report in the Court	24.07.2024		
iii	The date of the committal of the case to the Court of Sessios	Nil		
iv	The date of questioning of the Accused under sections 8(c), 20(b) (ii)(A), 25, 29(1), NDPS Act 1985 & 353, 506(2) IPC of the Code of Criminal Procedure, 1973 as the case may be	10.10.2024		
v	Filling of all miscellaneous petitions and their results including the results on challange before superior Courts; except routine petitions like petitions under Section 317 of the Code	Nil		
vi	Date of examination in-Chief and cross examination of a witness	Witness	Date of Chief Examination	Date of Cross Examination
		PW-1	18.11.2024	18.11.2024
		PW-2	18.11.2024	18.11.2024
		PW-3	18.11.2024	18.11.2024
		PW-4	06.12.2024	06.12.2024
vii	Date of examination of the accused	09.12.2024		

	under section 313 of the Code	
viii	Details of abscondance of an accused and his appearance/production, as the case may be ; and	NIL
ix	Grant of stay by superior Courts and the results thereof.	No Stay

1. The case of the prosecution as revealed by the final report is as follows:

The Inspector of Police, R9 Valasarawakkam Police Station has laid the final report in terms of Section 173(2) Cr.P.C against the accused A1 to A4 that, on 26.02.2024 at about 1.45 AM, the A1 John David Raj and A2 Manikandan were found with illegal possession of 200 grams of Ganja in their two wheeler bearing Registration Number TN10BB4327 near Mega Mart, Valasarawakkam. When the Sub Inspector Devarajan, Head Constable Rajapandiyan and Gr-I PC Suresh attempted to catch them they pushed them and prevented them from discharging their duties by pelting stone which were lying down. During the course of the incident the Accused persons also threatened them with dire consequences. On their apprehension they gave their voluntary confession statement disclosing the involvement of A3 Alex Thomas and A4 Pradeep. and thereby A1 to A4 committed the offences punishable under Sections 8 (c) r/w 20(b)(ii)(A), 25 NDPS Act 1985, 353 and 506(ii) IPC. Hence the final report.

2. The Accused Persons appeared on summons and were furnished with the free copies of the case records in compliance with section 230 of BNSS. After giving sufficient time, on the basis of contents in the final report the Accused persons were questioned under Sections 8 (c) r/w 20(b)(ii)(A), 25 NDPS Act 1985, 353 and 506(ii) IPC. The Accused Persons denied the complicity of the offence to be false and claimed to be tried. On prima facie satisfaction charges were framed, read over and

explained to the Accused Persons. Thereafter the Prosecution witnesses were ordered to be examined by issuing summons to the witnesses.

3. It is the endeavour of the prosecution to prove the guilt of the Accused Persons beyond all reasonable doubts by adducing suitable evidence and relevant materials. The prosecution side has examined 4 witnesses out of 8 witnesses to establish the guilt of the accused persons and marked Ex.P1 to Ex.P16. M.O.1 to M.O.4 were marked on the side of the prosecution. On the side of the defence, no oral or documentary evidence were adduced and no Material objects were marked.

4. In support of the prosecution case the Prosecution side marked the special report as Ex.P1. Search Notice explaining the right of the Accused persons as Ex.P2 and Ex.P3 respectively, Seizure of contraband and Accused vehicle through 2 Seizure Mahazars from each accused as Ex.P4 and Ex.P5 respectively, the Admissible portion in the confession statement of A1 Alex Thomas to PW1 as Ex.P6, the Admissible portion in the confession statement of A2 Pradeep to PW1 as Ex.P7, the First Information report as Ex.P8, the admissible portion of the confession statement given by A1 is Ex. P9. The admissible portion of the confession statement given by A2 as Ex. P10. The 2 form 95 as Ex.P11 and Ex.P12 respectively. The material objects viz., seized ganja of 100 grams each from A1 and A2, Cell phone and the two wheeler as M.O.1 to M.O.4 respectively and the forensic report as Ex.P13 are marked on the side of the prosecution.

5. The succinct elucidation of the case of prosecution as revealed by the prosecution witnesses and their evidence is as under:-

5.1. During surveillance as per the directions of the Inspector of Police, R9 Valasarawakkam on 26.02.2024 at about 1.00 hour near Valasarawakkam Mega Mart on the basis of secret information about the illegal possession and sale of Ganja by A1 John Davidraj and A2 Manikandan @ Akash to School students, PW1 Thiru Devarajan, the Sub Inspector of police along with Head Constable Rajapandian and

Grade – I Constable Suresh, from 1.45 hours to 2.00 hours, found the A1 John Davidraj and A2 Manikandan @ Akash in blue colour Scooty two wheeler bearing registration number TN10BB4327. When they came to check him they attempted to turn the two wheeler so as to escape. Thereafter they put the two wheeler down, took stones and began to throw stones on the police when they tried to catch him and threatened them, thereby prevented them from performing their duty. However they Caught the accused A1 and A2 and enquired them. They came to know that they were the accused persons about whom they received information. They were informed about their right in search. As the accused persons informed that they can be searched by PW1, on physical search he came to know about the possession of 200 grams of contraband Ganja in a polythene cover. Since there were no available independent public witnesses he seized the same in the presence of Head Constable Rajapandi and Suresh. Thereafter 2 samples of 50 grams each of Ganja were taken, sealed and numbered as S1 and S2 to be forwarded to chemical analyst. He then recorded the confession statement of the accused persons in the presence of witnesses. The 2 samples and remaining ganja, the Cell phone and the two wheeler were seized through seizure mahazars and was brought to the police station along with the Accused persons. Thereafter he lodged a special report with the Inspector of Police. The Special report is Ex.P1. Search Notice explaining the right of the Accused persons are Ex.P2 and Ex.P3 respectively. Seizure of contraband, Accused vehicle and cell phone through 2 Seizure Mahazars from each accused are Ex.P4 and Ex.P5 respectively and the Admissible portion in the 2 confession statements of A1 John Davidraj are Ex.P6 and Ex.P7 respectively. As per the confession statement of A1, the involvement of A3 Alex Thomas and A4 Pradeep was founded. The Inspector enquired PW1.

5.2. On 02.03.2024 at about 8.30 hours during surveillance as per the directions of the Inspector of Police, R9 Valasarawakkam near Valasarawakkam Chowdhari Nagar main road on the basis of secret information about the illegal possession and sale of

Ganja PW3 Thiru Gopalakrishnan, the Sub Inspector of police along with Head Constable Rajapandian and Grade – I Constable Suresh, from 8.15 hours to 8.45 hours, found the A3 Accused Alex Thomas in respect of Crime No.183 of 2024. He was informed about his right in search. As the accused informed that he can be searched by PW4, on physical search he came to know about the possession of 100 grams of contraband Ganja. He seized the same in the presence of police witnesses. Thereafter 2 samples of each 25 grams of Ganja were taken, sealed and numbered as S1 and S2 to be forwarded to chemical analyst. He then recorded the confession statement of the accused in the presence of witnesses. PW4 recorded the confession statement of the A3 Alex thomas and based on his confession statement they traced and nabbed A4 Pradeep near Velappanchavadi Toyota Showroom who came by walk in respect of Crime No.183 of 2024. A4 was also informed about his right in search. As the accused informed that he can be searched by PW4, on physical search he came to know about the possession of 100 grams of contraband Ganja. Since there were no available independent public witnesses he seized the same in the presence of police witnesses. Thereafter 2 samples of each 25 grams of Ganja were taken, sealed and numbered as S1 and S2 to be forwarded to chemical analyst. He then recorded the confession statement of Accused. Thereafter he went to the police station along with the accused persons and gave special report to the PW4 Inspector of Police and case was registered in crime No. 183/2024. Thereafter during investigation it was found that A3 and A4 were involved in Crime No.164 of 2024 as well. Hence the true copies of the confession statements were retained for the records in this case. The Admissible portion in the confession statement of A3 Alex Thomas to PW4 is Ex.P8 The Admissible portion in the confession statement of A4 Pradeep to PW4 is Ex.P9.

5.3. On 26.02.2024 at about 6.45 hours when PW3 was incharge of the police station as the Inspector of Police, PW1 lodged his special report. Based on the special report the case was registered by PW4 in Crime No. 164 of 2024 under Sections 8 (c) r/w 20(b)(ii)(A), 25 NDPS Act 1985, 353 and 506(ii) IPC against accused persons

John Davidraj, Manikandan and absconded accused Alex Thomas. The First Information report is Ex.P10. He then arrested the accused persons John Davidraj and Manikandan on the same day. The accused persons gave a voluntary confession statement in the presence of police witnesses Rajapandian and Suresh. The admissible portion of the confession statement given by A1 is Ex. P11. The admissible portion of the confession statement given by A2 is Ex. P12. He then forwarded them to judicial custody on the same day. Thereafter he examined the PW1, obtained the search notice, search intimations, and seizure mahazars and recorded his statement. He then seized the stone used for the offence in the presence of witnesses Mariselvam and farhad ali in the place occurrence through the seizure mahazar. The said seizure mahazar is Ex.P13. Based on the confession statement of A1 and A2 he arrested A3 and A4 on 02.03.2024 after explaining the grounds of arrest and forwarded them to the judicial custody. The seized material objects were forwarded to the court through 2 form 95 which are Ex.P14 and Ex.P15 respectively. The material objects viz., seized ganja of 200 grams, Redmi Cell phone, the two wheeler and the stones are M.O.1 to M.O.4. The samples S1 and S2 from seized Ganja were forwarded to the forensic department for forensic examination. He then examined the chemical analyst Tmt.Visalakshi, forensic expert and obtained the forensic report Ex.P16 and recorded her statement. On completion of investigation the result of investigation pointed the guilt of the Accused persons and hence the final report.

6. The Accused Persons were then questioned under section 351(1)(b)BNSS [*Corresponding old 313(1)(b) Cr.P.C*] about the incriminating circumstances found in the evidence of the prosecution witnesses, whereas the Accused Persons denied the complicity with the crime. The Accused Persons stated that they have no defence witnesses to be examined on their side.

7. **The Point for determination:** whether the prosecution has proved the guilt of

the accused persons under sections 8 (c) r/w 20(b)(ii)(A), 25 NDPS Act 1985, 353 and 506(ii) IPC beyond all reasonable doubts?

8. Heard both sides. Records Perused.

9. **Discussion:**

In the present case the Accused Persons have been allegedly found in possession of 200 grams of Narcotic substance viz., Ganja. The Accused Persons have been informed of their right under section 50 of the Act before search by the officers as per the evidence of PW1 to PW4. Ex.P2 and Ex.P3 would reveal that such a notice was given to the Accused Persons prior to search. Samples have been taken on the spot by the officers themselves and packed them with seal as S1 and S2. At this instance the officers failed to comply with the provisions of 52A of NDPS Act.

10. The main contention of the Accused Persons is that the entire action of seizure and sampling are wholly illegal. It has been done in violation of the mandatory provisions of Section 52A (2) of the NDPS Act as the procedure prescribed therein has not been followed in drawing the samples and seizing the alleged narcotic substance. Further, there is a serious doubt about the correctness of samples sent for analysis as to whether they were actually the samples of the seized contraband since the contraband has not been seized in the presence of gazetted officer and the samples are not taken in the immediate presence of Magistrate. No inventory is certified by the Magistrate as well. The chain of custody of the samples are not properly elucidated by the prosecution and the evidence of PW1 to PW4 is not clear about the same. Hence prayed for acquittal of the accused persons.

11. Section 52A (2), (3) and (4) of the NDPS Act provide for the procedure and manner of seizing, preparing the inventory of the seized material, forwarding the seized material and getting inventory certified by the Magistrate concerned. It is

further provided that the inventory or the photographs of the seized substance and any list of the samples in connection thereof on being certified by the Magistrate shall be recognised as the primary evidence in connection with the offences alleged under the NDPS Act. When any contraband is seized and forwarded to the police or to the officer somentioned under Section 53, the officer mentioned in Section 53(1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

12. In this case, there is no evidence on record to the effect that the procedure prescribed under subsections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. Further the samples in this case were drawn in by the PW1 Sub Inspector of police in the absence of gazetted officer in the spot itself.

13. In the case of Union of India vs Mohanlal and Anr reported in (2016) 3 SCC 379 Hon'ble Supreme Court while dealing with Section 52A of the NDPS Act clearly laid down that "16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words,

the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. 17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. 18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction."

14. Further in the case of Yusuf @ Asif Vs State in Criminal Appeal No.3191 of 2023 [Arising out of SLP (Crl.) No. 3010 of 2023] dated: October 13, 2023 reported in (2023 IN SC 912) it has been held thus, "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 a whole stands vitiated."

15. Even in the case of Mangilal vs State of Madhya Pradesh reported in 2023 INSC 634 it has been held thus, "5.Sub-section (2) of Section 52A of the NDPS Act

mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.”

16. The Forensic Science Laboratory report from the chemical analyst reveals the samples marked as S1 and S2 containing a net weight of less than 50 gms (26.8 grms and 19.2 grams respectively) is drawn by the PW1 in the spot. As per the seizure mahazar it is clearly revealed that the 50 grams each of 2 samples were taken in the spot in the presence of Accused Persons and in the presence of police subordinates who went along with PW1. Admittedly neither gazetted officer nor the magistrate was present. The certification by the magistrate is also lacking as per the dictum laid down in Mohanlal’s case. As such the prosecution failed to adduce the primary evidence in this case.

17. The further contention on the side of the defence is that the prosecution side has foisted a false case against the accused persons in a way that same provisions of law was invoked on all the accused persons when two of them being A3 and A4 were seen to have allegedly apprehended at a different date and time in respect of different case. There has been an allegation on the side of the prosecution that the A1 and A2 threw stones on the police at the time of them being caught so as to escape from

being nabbed. In these circumstances the prosecution side having seized the alleged stones and marked the same in evidence has not examined the independent witnesses cited as per the seizure mahazar revealing that the case is a foisted one with untrue allegations. Also it is contended that as per the prosecution case as per final report there is allegation of pelting of stone by A1 and A2 alone and there was no whisper about A3 and A4 in respect of such allegation but case has been registered under the same provisions against A1 to A4 even though there was no such allegation against A3 and A4. Therefore it is argued that the sole testimony of the police witnesses should not be relied upon in proof beyond doubts in the absence of independent witnesses. The police officers have deliberately stated that there were no public witnesses when the offence is allegedly taken place in a public places and the places alleged are public places crowded with people all the time.

18. In this regard it is pertinent to rely upon the decision of Hon'ble Madras High Court in the case of Karnam Thakka Babu Vs State represented by Inspector of Police, Koyambedu Police Station reported in 2013 (2) MWN (CrI) 184 wherein it has been held that "When the seizure was effected in the public place, a busy main road, without procuring independent witnesses from public but in the presence of police witnesses- Effect of-prosecution case that though attempt was made to procure independent witnesses from public, they refused to stand as witness is not acceptable- No details of persons called to stand as witnesses but refused- Nothing as to action taken against persons, who refused to stand as witnesses available as contemplated under section 100 (8) of Cr.P.C-Even if no independent witnesses available and the Accused Persons opted for search in the presence of police witnesses, the Accused Persons could have taken before the gazetted officer or magistrate for effecting seizure- Manner in which seizure effected, held, does not inspire the confidence of court-Seizure in presence of independent witnesses though not mandatory, police must secure independent witnesses and let in evidence to gain confidence of court"

19. Per contra, on the side of the prosecution it is contended that there is a presumption of culpable mental state under section 35 of NDPS Act. Unlike any other criminal offence, there is no hard and fast rule that accused is presumed innocent until his guilt is proved beyond all reasonable doubts. The Accused Persons charged with offence under sections 8 (c) r/w 20(b)(ii)(A) and 25 NDPS Act 1985 have to rebut the presumption against them and the burden of proof would lie on them to show that they have not committed the act constituting an offence. It is also contended by the prosecution side that once possession of narcotic or psychotropic substances is established then it would be presumed that the possession is conscious possession and the Accused Persons have to prove that it was unconscious possession.

20. However the defence side would contend that, though the NDPS Act carries the reverse burden of proof, it does not absolve the prosecution from establishing a prima facie case against the Accused Persons. There is no independent witnesses adduced by the prosecution. Though search is effected in the public place non procurement of public witness would not discharge initial burden vested on the side of prosecution.

21. In Noor Aga Vs State of Punjab and another reported in 2008 (16) SCC 417 Hon'ble Supreme Court has held thus "Initial burden of proof of possession of contraband articles would lie on prosecution and on its discharge, legal burden would shift on the accused. The Standard of proof required to establish the guilt of the accused by the prosecution would be proof beyond all reasonable doubts, but that required by accused to prove his innocence would be preponderance of probability"

22. In the present case the prosecution witnesses have testified before the court that 200 gms of Ganja were seized from the Accused persons A1 and A2 possession in the presence of other mentioned police officer by PW1. The confession statement given by the Accused persons to PW1 and PW4 in the presence of said officers are also

admissible as per section 27 of Indian Evidence Act since the same led to the recovery of the ganja from the immediate possession of the Accused persons. There is no substantial cross examination in respect of the search notice Ex.P2 and Ex.P3 as well. Even the seizure mahazars does not disclose the Crime Number revealing that the contraband was seized at the instance of the accused persons in the Spot itself. Therefore the prosecution has almost discharged the initial burden in proof of possession however failed to comply the mandatory provisions under section 52A of the act by not taking samples in the presence of magistrate and by not obtaining certificate thereof since inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Owing to the non compliance of Section 52A the chain of custody of the seized contraband is not established and has raised a doubt i.e the possibility of a different sample being sent to the FSL because of non fulfillment of the provision.

23. In the case of Danraj Vs State Represented by Inspector of Police K6 T.P.Chatram Police Station (Criminal Appeal No. 319 of 2012) it has been observed thus "43. If we analyse these decisions of various High Courts including our High Court, one uncontroverted legal position would be that, whenever the contraband is seized, that should be immediately produced before the Court concerned and if there is any delay in producing the contraband to the Court, the prosecution must come forward to give a satisfactory and acceptable reason for the delay to this Court and in this regard, if there is any delay occurred, the prosecution must be in a position to give cogent evidence to the satisfaction of the Court for accepting such delay. Also the prosecution must be in a position to give proper explanation with records to show that, in between period, i.e., before the contraband produced before the Court concerned, the same had been kept in safe custody at the hands of the prosecution and in this regard, if there is any safe custody Register / Malkhana Register, the contraband seized should have been entered into the Malkhana Register with date and time with the signature of the incharge of the Malkhana house and thereafter

whenever it is taken from the Malkhana house, that should also be again entered into the Register with the signature of the incharge of the Malkhana house and these documents should also be produced before the Court along with the contraband if it is produced in delay.⁴⁴ These are all the general parameters, provided by the Courts of law in number of Judgments, as has been referred to above, to be mandatorily followed by the prosecution.”

24. Even in this case, such delay has occasioned in submitting the samples for forensic examination and there is no whisper about the safe custody of the contraband till the same was subjected to chemical analysis. Even on the said reason the prosecution case is bound to fail as in ultimatum the prosecution failed to establish the custodial chain of the contraband with reasonable explanation though the FSL report suggests that the sample contains cannabinoids. Therefore considering the dictum laid down in Mohanlal’s case mentioned supra this court is of the considered view that the prosecution failed to adduce primary evidence as contemplated under section 52A NDPS Act and accordingly the accused is acquitted of charges under sections 8 (c) r/w 20(b)(ii)(A), 25 NDPS Act 1985 and this point is answered accordingly.

25. The further case of the prosecution is that at the time of securing the accused persons, A1 and A2 dropped the two wheeler, pelted stones at the police and was about to flee and when PW1 and the other Police officers caught them. By pelting stones and threatening the police they were prevented them from discharging their duties.

26. The said stones have also been seized through the seizure mahazar. The learned counsel for the defence contended that there are material contradictions in the evidence of the prosecution witnesses. As per the prosecution case in the final report there is no whisper about which accused pelted stones at the police. There can be no

charge against A1 to A4 when A3 and A4 were not arrested on the same time. The said allegation is clearly as cooked up story since the accused persons would not dare to throw stones at the police, instead they would only try to run away after seeing the police. There is no such allegation against A3 and A4 in respect of the same in the final report and A3 and A4 has stood trial for the said offence as well. The material object stone though has been seized and marked in evidence by the prosecution but none of the witnesses to the said seizure mahazar has been examined in this case.

27. Section 353 of Indian penal code reads as follows:

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

28. In the present case, there is no independent witness examined witnessing the allegation of PW1 that the accused persons pelted stones against the officers involved in the raid. Admittedly, the police officers are public servant, discharging official functions. However, in order to prove the offence under section 353 IPC the prosecution has to establish that the accused persons did an act to prevent or deter the said public servant from discharging the duty as such public servant. In this case, though there is allegation of pelting of stone against the police officers involved in the raid, the witnesses to the seizure mahazar in respect of seizure of stone has been examined in court. As contended by the defence there are material contradictions in the evidence of the prosecution witnesses and the prosecution case in respect of this offence as well. In these circumstances, the prosecution has not clearly established that the accused threw stone over the police officers at the time of securing them. Further when the offence is said to have taken place in a public place, there is no eye

witness or independent witness examined excepting the police witnesses who were allegedly present during the raid in respect of pelting of stone. Like wise there is no allegation of pelting of stone against A3 and A4 which makes the prosecution case unbelievable. Only with the evidence of the police witnesses the offence alleged by the prosecution under section 353IPC cannot be proved and the accused persons are acquitted accordingly.

29. The further case of the prosecution is that during the course of the incident, the police officers were threatened and intimidated by the accused persons. However, at the time of evidence, PW1 has not stated as to whether he was really apprehended with fear and that the threat given by the accused persons were real in nature. Though there is allegation of pelting of stones by the accused persons, the prosecution has produced one stone without mentioning the nature of stone without adducing seizure mahazar. When as per the final report the police were intimidated by A1 and A2 there cannot be a charge against A3 and A4 as well. In this case A3 and A4 are also charged for the same as well. In order to attract offence under section 506(2) IPC it has been laid down by the honourable Supreme Court and honourable High Courts in catena of decisions that the threat shall be a real threat believed by the complainant. He must have been really threatened that there was an imminent danger to his or her life. In the present case, there is no such evidence on record, and there is no evidence of real threat or imminent and danger to life as well. None of the other witnesses also deposed anything about the real threat feared by them because of the act of the accused persons. In these circumstances, this court is of the considered view that the prosecution has not established the ingredients which are required to satisfy the offence under section 506(2) IPC against A1 to A4 and the accused persons are liable to be acquitted and this point is answered accordingly.

30. In the result, the accused persons A1 to A4 are not found guilty under sections 8(c)r/w20(b)(ii)(A), 25 NDPS Act 1985, 353 and 506(ii) IPC and the accused persons

are acquitted as per the section 271(1) BNSS. The bail bonds shall stand cancelled after the appeal time is over.

31. The case properties viz., M.O.1 Ganja (200 grams) produced in PI No. 88 of 2024 is ordered to be destroyed through competent authority after the appeal time is over. M.O.2 Redmi Cell phone and M.O.3 Two wheeler bearing registration number TN 10 BB 4327 in PI No. 88 of 2024 is ordered to be handed over to the Accused/Owner after the appeal time is over. The case property M.O.4 Stone in PI No.95 of 2024 is ordered to be destroyed after appeal time is over.

Typed by the typist directly in the computer, corrected and pronounced by me in open court on this the 19th day of December 2024.

Sdx/-Tmt.M.Amudha
Judicial Magistrate No.1,
Poonamallee.

List of Prosecution side Witnesses:-

PW1 : Tr.Devarajan

PW2 : Tr.Suresh

PW3 : Tr.Gopala Krishnan

PW4 : Muhammed Sabiyullah

List of Prosecution side documents :-

Ex.P-1 Special Report

Ex.P-2 written notice

Ex.P-3	written notice
Ex.P-4	Seizure Mahazar
Ex.P-5	Seizure Mahazar
Ex.P-6	Admissible Portion
Ex.P-7	Admissible Portion
Ex.P-8	Admissible Portion
Ex.P-9	Admissible Portion
Ex.P-10	FIR
Ex.P-11	Admissible Portion
Ex.P-12	Admissible Portion
Ex.P-13	Seizure Mahazar
Ex.P-14	Form 95
Ex.P-15	Form 95
Ex.P-16	Investigation Report

List of Prosecution Material Object:

- M.O.1 - 200grams of Kanja
- M.O.2 - Redmi Cellphone
- M.O.1 - Two wheeler
- M.O.1 - 2 small stones

List of Defence Side Witnesses: Nil
List of Defence Side Exhibits: Nil
List of Defence Side Material Object: Nil

Sdx/-Tmt.M.Amudha
Judicial Magistrate, No.1
Poonamallee