

Crl.R.C(MD)No.41 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 16.06.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**Crl.R.C(MD)No.41 of 2019**

Nahoorkani

... Petitioner/Petitioner

Vs.

The State,  
Represented by the Inspector of Police,  
Puliyangudi Police Station,  
Tirunelveli District.  
(Crime No.387 of 2018).

... Respondent/Complainant

**PRAYER:** Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the learned Additional District Judge/Principal Sessions Court/Special Court for E.C and NDPS Act Cases, Madurai in Cr.M.P.No.137 of 2019, dated 22.01.2019 and to set aside the same and further direct the learned Additional District Judge/Principal Sessions Court/Special Court for E.C and NDPS Act Cases, Madurai to grant interim custody of the vehicle, a Jeep viz., Mahindra - Thar bearing Registration No.KL-31-E-9699 to the petitioner.

For Petitioner : Mr.M.Ramesh

For Respondent : Mr.T.Senthil Kumar  
Additional Public Prosecutor



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## **ORDER**

This revision has been filed as against the order passed in Cr.M.P.No.137 of 2019, dated 22.01.2019 on the file of the learned Additional District Judge/Principal Sessions Court/Special Court for E.C and NDPS Act Cases, Madurai, thereby dismissed the application filed under Section 451 of Cr.P.C to return the vehicle bearing Registration No.KL-31-E-9699.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the said vehicle and he has been implicated as the second accused in Crime No.387 of 2018 for the offences under Section 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act. On 30.11.2018, the respondent arrested the petitioner and seized his vehicle. Hence, the petitioner filed an application in Cr.M.P.No.137 of 2019 on the file of the learned Additional District Judge/Principal Sessions Court/Special Court for E.C and NDPS Act Cases, Madurai, to return the said vehicle under Section 451 of Cr.P.C and the trial Court dismissed the said petition. Hence, the present revision.



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3.The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner is arraigned as the second accused in Crime No.387 of 2018 and the vehicle owned by him was also involved in the crime. Therefore, the petitioner was arrested and the vehicle was seized along with contraband. The petition filed under Section 451 of Cr.P.C is not at all maintainable for the release of the property when the petitioner's vehicle was seized along with contraband under the NDPS Act. If at all any grievance over the seizure of the vehicle from the petitioner, he can very well approach the trial Court under Sections 60 and 63 of the NDPS Act.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.The petitioner is an accused in Crime No.387 of 2018 registered for the offences under Section 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act. The case of the prosecution is that the petitioner was found in possession of Ganja in his vehicle bearing Registration

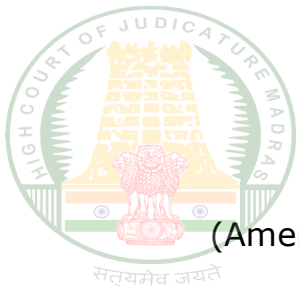


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No.KL-31-E-9699. On registration of the F.I.R, the vehicle was seized along with the contraband from the custody of the petitioner. While pending investigation, the petitioner filed a petition for return of property under Section 451 of Cr.P.C. It was dismissed on the ground that the petitioner suppressed the fact that earlier the vehicle was involved in a similar offence and it was returned on condition that the petitioner shall not use the vehicle and indulge in any crime. The said fact was suppressed and filed a petition for return of property.

6.The point for consideration in this revision is that whether the petition filed under Section 451 of Cr.P.C for return of vehicle is maintainable or not?

7.The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted consolidating and amending the provisions for the control and regularization of operating relating to the Narcotic Drugs and Psychotropic Substances under the Opium Act, 1878 and the Dangerous Drugs Act, 1930. This Act was amended once in the year 1989 and subsequently in the year 2001. During the implementation of the Narcotic Drugs and Psychotropic Substances



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(Amendment) Act, 2001, certain anomalies have been noticed. It is proposed to rectify those anomalies and make certain further changes to strengthen the provisions of the Act by the Indian Parliament Act No.16 of 2014. Accordingly, the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, came into force on 07th March, 2014 and was published in the Gazette of India, Extraordinary, Part II Section 1, No.17, dated 10th March, 2014. Accordingly, Section 52A of the Principal Act amended and the provision under Section 52A of the Principal Act is as follows:-

*"In Section 52A of the Principal Act.-*

*(a) for sub-Section (1), the following sub-Section shall be substituted, namely:-*

*(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, **psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances**, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that*



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*Government may, from time to time, determine after following the procedure hereinafter specified.*

*(b) In sub-Section (2)-*

*(i) for the words "narcotic drug or psychotropic substance" and "narcotic drugs or psychotropic substances", wherever they occur, the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted;*

*(ii) In clause (b), for the words "such drugs or substances", the words "such drugs, substances or conveyances" shall be substituted;*

*(c) in sub-Section (4) for the words "narcotic drugs or psychotropic substances", the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted."*

8.The Government of India in the Department of Revenue, Ministry of Finance have issued instructions regarding the manner of disposal of the seized narcotic drugs, psychotropic substances, controlled substances and conveyances. Accordingly, the instruction was issued to the Head of the Department of each State, and drug law enforcement agency to constitute one or more Drug Disposal Committees to dispose of the seized narcotic drugs,



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psychotropic substances, controlled substances and conveyances.

Accordingly, the Drug Disposal Committee was formed for each zone and Chennai City. Accordingly, the Central Government made Rules by the notification, dated 23.12.2022, as Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Rules 16 and 17 of the said Rules says items that can be disposed of, which reads as follows:-

**"16.Items that can be disposed of.**

- *Having regard to the hazardous nature, vulnerability to theft, substitution and constraints of proper storage space, all narcotic drugs, psychotropic substances, controlled substances and conveyances, as soon as may be after their seizure, shall be disposed of in the manner determined under Section 52A of the Act.*

**17.Officers who shall initiate action for disposal.-**

*Any officer in-charge of a police station or any officer empowered under Section 53 of the Act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under Section 52-A of the Act after receipt of chemical analysis report."*



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9.In case of conveyance, the committee shall verify the engine number, chassis number and other details mentioned in panchanama and certify the inventory thereof. With regard to the mode of disposal of conveyances, the seized conveyances shall be sold by way of tender or auction as may be determined by the Drug Disposal Committee. Rule 29 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, reads as follows:-

**"29. Repeal and savings. -**

*(1) The Standing Order No. 1/88, dated the 15th March, 1988, Standing Order No 2/88, dated the 11th April, 1988, issued by the Narcotics Control Bureau, Standing Order No. 1/89, dated the 13th June, 1989, issued by the Government of India, Ministry of Finance (Department of Revenue), the notification of the Government of India, Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R.339(E), dated the 10th May, 2007 and the notification of the Government of India, Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R.38(E), dated the 16th January, 2015 are hereby repealed.*





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(2) *Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the Standing Order or notification repealed by sub-rule (1) shall, in so far as it is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the corresponding provision of these rules”.*

As per Rule 29 of the Rules, 2022, all the earlier Circulars and Standing Orders were repealed. As per the Rules, Forms were issued for the disposal of drugs and others etc.

10. In so far as the confiscation is concerned, it is relevant to extract the provision under Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as follows:-

**"63.Procedure in making confiscations.-**

*(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it*



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decides that the article is so liable, it may order confiscation accordingly.

(2) **Where any article or thing seized under this Act** appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly.

**Provided that no order of confiscation of an article or thing** shall be made until the expiry of **one month** from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

*Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, [or controlled substance,] the opium poppy coca plant or cannabis, plant is liable to speedy and natural decay, or if the court is of opinion that it sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale."*



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11.Thus, it is clear that the intention of the legislature is not to confine its drive to curb the spreading of Narcotic Drugs and Psychotropic substances to take actions against the carriers but to strike at the big fish involved in spreading and sustaining the malady by taking actions against the persons providing facilities for transportation and stocking of contraband substances as also confiscating such transport and facilities involved in smuggling of the case. It is also relevant to extract the provision under Sections 60, 61, 62 and 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which read as follows:-

***“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-***

[(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance 3[or controlled substances] lawfully produced, imported inter-State, exported inter-State,



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imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 3[or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

***61. Confiscation of goods used for concealing illicit drugs or substances.-***

Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under this Act shall also be liable to confiscation.



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## **62.Confiscation of sale proceeds of illicit drugs or substances.-**

Where any [narcotic drug, psychotropic substance or controlled substance] is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

### **"63.Procedure in making confiscations.-**

*(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.*

*(2) **Where any article or thing seized under this Act** appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly.*

**Provided that no order of confiscation of an article or thing** shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the



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evidence, if any, which he produces in respect of his claim:

**Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, [or controlled substance,] the opium poppy coca plant or cannabis, plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this subsection shall as nearly as may be practicable, apply to the net proceeds of the sale.**

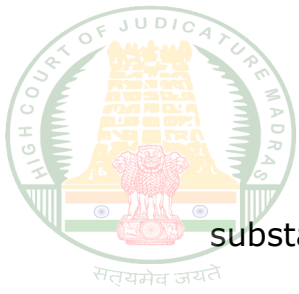
12. Further, the provision under Section 63 of the NDPS Act is clear that the decision regarding confiscation had got to be taken during the trial and not after it and the right of the State to confiscate the conveyance and articles or things seized under this Act is irrespective of the result of the trial. In view of the provision under Section 63 of the Act, the provisions of the Code of Criminal Procedure as contained in Sections 451 and 452 will stand modified to the extent and any claimant to the property will be obliged to satisfy the Court in terms of the exceptions carved out in Sections 60, 61 and 62 of the NDPS Act before he is returned the custody of the vehicle taken into consideration when it was being used for transporting a narcotic substance. Therefore, when the conveyance



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is seized under the NDPS Act, the return of property does not arise as contemplated under Sections 451 and 452 of Cr.P.C and it is liable to be confiscated under Section 63 of the NDPS Act. The Magistrate may not have jurisdiction to entertain a petition filed under Section 451 of Cr.P.C in the light of the Special Rule made under Section 52A of the Act.

13. In fact, Section 63 of the Act had provided for a procedure in making confiscations. It gives the power to the Court to decide whether any article or thing seized under the Act is liable to be confiscated in terms of Sections 60, 61 or 62 of the Act. Before the amendment to Section 52A, the conveyance was not included as an item which should be seized and disposed of. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into account the fact that most of the transportation is done in conveyances which itself is defined under Section 2(viii) as meaning "a conveyance of any description whatsoever including any aircraft, vehicle or vessel". Therefore, if any vehicle is involved in the transportation of narcotic drug, psychotropic substance or controlled



substance, such vehicles also could be seized and disposed of in terms of Section 52A(1) of the Act.

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14. In the case of ***Union of India Vs. Mohanlal and another*** reported in **2016 (3) SCC 379**, the Honourable Supreme Court of India issued certain directions, which reads as follows:-

*"31. To sum up we direct as under:*

*31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.*

*31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate*





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*steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.*

*31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.*

*31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".*



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15.However, the above procedures are not followed by the Special Courts to confiscate the conveyance which is used in drug trafficking as contemplated under Sections 52(A) and 63 of the NDPS Act. Therefore, the accused or the owner of the conveyance are constrained to file a petition under Section 451 of Cr.P.C to return their conveyance. Hence, this Court is constrained to issue the following directions to the trial Courts and the Investigating Officers.

16.Accordingly, this Criminal Revision Case is disposed of with the following directions to the Special Courts and the Investigating Officers with regard to the disposal of conveyances seized under the NDPS Act, 1985:-

*"(i) Immediately after seizure of conveyance, the Investigating Officer shall ascertain the ownership and hypothecation details, if any, of the seized conveyance from the concerned Registering Authority and the details of seizure of conveyance shall be informed to the concerned Registering Authority.*

*(ii) The Investigating Officer shall approach the Judicial Magistrate/Special Court in terms of Section 52A(2) of the NDPS Act, 1985, for certification of the correctness of the inventory and taking photographs, certification of such*



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*photographs and photocopies of Registration Certificate, Insurance, permit, Pollution and other relevant documents of the conveyance.*

*(iii) The Investigating Officer shall prepare an inventory of the seized conveyance in the format given below:-*

*Inventory of Seized conveyance*

*(Under Section 52A(2) of the NDPS Act, 1985)*

1)	Crime No.	
2)	Seizing Agency	
3)	Seizing Officer	
4)	Date of Seizure	
5)	Place of Seizure	
6)	Found in possession of the person	
7)	Registration No.	
8)	Chassis No.	
9)	Engine No.	
10)	Make	
11)	Model	
12)	Colour	
13)	Cubic Capacity	
14)	Total KM run	
15)	RTO Detail	
16)	Ownership Details	
17)	Hypothecation Details	
18)	Insurance Details	
19)	Fast Tag Details	
20)	Name and Designation of the officer prepare the inventory	



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(iv) *With permission of the Magistrate for taking photographs of the conveyance which stationed at warehouse or any other place. The photographs of the cavities made in the vehicle shall be covered specifically. It also shall contain chassis number and engine number etc.*

(v) *In terms of S. 52 A (2) of the NDPS Act, 1985 r/w notification G.S.R. 899(E) dated 23.12.2022, no separate order is required for disposal of seized vehicle. The inventory, certified photographs and certified copies of Registration Certificate and other relevant documents would be forwarded to the trial court for treating it as primary evidence.*

(vi) *The Investigation Officer send the copy of the inventory and other case documents, Panchnama/seizure memo a set of photographs shall be forwarded to the concerned Drug Disposal Committee.*

(vii) *After receipt of chemical analysis report, any officer in-charge of a police station / any officer empowered under section 53 of the act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under section 52-A NDPS Act.*



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(viii) *The sale proceeds of such conveyances shall either be deposited in the official account of DLEA and its proof would be submitted in the Court or in the form of Fixed Deposit after deposition in any public sector bank would be submitted in the Court.*

(ix) *If the trial Court order confiscation/forfeiture of the conveyance to the Department, the Department shall forfeit the sale proceeds along with accrued interest in the manner known to law.*

(x) *If the vehicle is not confiscated/forfeited to the Department, if the Department does not challenge the order in Appellate Forum, then such sale proceed would be released to the rightful owner with accrued interest under intimation of the Court.*

(xi) *Any person claiming the ownership of the conveyance, he may approach the concerned Drug Disposal Committee directly and make his claim. On such application Drug Disposal Committee concerned before taking decision on the disposal of the vehicle, shall grant opportunity of hearing to the parties and pass appropriate orders on the representation made by the party in accordance with law as expeditiously as possible, within a period of 2 months.*



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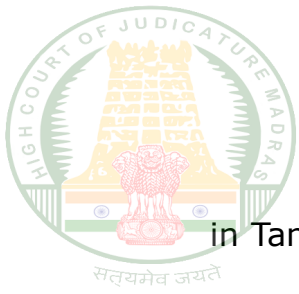


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*(xii) If any persons approach the Trial Court for release of vehicle, in case the property already produced before the trial court and assigned R.P.No. Then such court shall conduct enquiry and pass suitable orders as contemplated u/s 63 of NDPS Act or if the vehicle not produced before the court then competent court shall pass appropriate order by directing the Petitioner to approach concerned Drug Disposal Committee for getting suitable relief.*

*(xiii) All the trial courts/special court for NDPS, irrespective pending trial if they release the vehicle under section 451 of Cr.P.C, shall initiate the proceedings confiscation and dispose the vehicle as contemplated under section 63 of NDPS Act.*

17.The learned Additional Public Prosecutor submitted that humpty's number of vehicles which are involved in the NDPS Act are not claimed so far either by the owner/accused. All the unclaimed vehicles are lying in the concerned Police Station and they are decaying due to weather. Therefore, the Director General of Police, Chennai is directed to collect the data with regard to unclaimed vehicles and returned vehicles from the respective zone



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in Tamil Nadu once in two months and report before this Court once in three months.

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18.In the case on hand, though the Magistrate dismissed the petition filed for return of property on other ground, the petition itself filed under Section 451 of Cr.P.C is not all maintainable when the vehicle was seized under the NDPS Act.

19.Post the matter under the caption "for reporting compliance" on 27.09.2023.

**16.06.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes  
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To

- 1.The Additional District Judge/  
Principal Sessions Court/  
Special Court for E.C and NDPS Act Cases,  
Madurai.
- 2.The Inspector of Police,  
Puliyangudi Police Station,  
Tirunelveli District.

**Registry is directed to issue copy to the following  
concerned Courts and the officials:-**

- 3.All the trial Courts exercising the  
Jurisdiction under NDPS Act.
- 4.The Director General of Police,  
Chennai.
- 5.All the Commissioner of Police,  
Tamil Nadu.
- 6.All the Inspector General of Police,  
Tamil Nadu.





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**G.K.ILANTHIRAIYAN, J.**

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Order made in  
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**16.06.2023**