



Crl.A.No.541 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.541 of 2017

Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai - 600 090.

... Appellant

Vs.

1.Selvi
2.Janaki
3.Rathi

... Respondents

Prayer : Criminal Appeal filed under Section 377 (2) and 378 Criminal Procedure Code 1973, to set aside the judgement and orders dated 28.02.2017 passed in C.C.No.35/2012 by the Special Judge, II Additional Special Court under NDPS Act, Chennai.

For Appellant : Mr.N.P.Kumar

Special Public Prosecutor for Central Government

For RR1 and 2 : Ms.S.Varshini

Legal Aid Counsel

For R3 : Ms.S.Vasavi Sridevi

Legal Aid Counsel

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JUDGMENT

The respondents 1 and 2/ accused 1 and 2 stood charged for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C) and 29 of NDPS Act, 1985, while the third respondent / fourth accused charged for the offences punishable under Section 8(c) r/w. 29 of NDPS Act, 1985.

2. The learned Special Judge, II Additional Special Court under NDPS Act, Chennai, after full trial, convicted and sentenced the Accused 1 and 2, vide his judgment dated 28.02.2017, as detailed hereunder.

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1	Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act,	Rigorous Imprisonment for five years and to pay a fine of Rs.25,000/-, in default, to undergo Rigorous imprisonment for six months
A2	Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act,	Rigorous Imprisonment for five years and to pay a fine of Rs.25,000/-, in default, to undergo Rigorous imprisonment for six months



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<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.		

Tmt.Rathi (A4), was acquitted of all the offences of which she was charged. Challenging the order of acquittal of the fourth accused and conviction of A1 and A2 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(B) instead of 8(c) r/w.20(b)(ii)(C) of NDPS Act, the present appeal is filed by the State.

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. Thiru.S.Maharajan (P.W.9), the then Sub Inspector of Police, Railway Protection Force (RPF), on receipt of a complaint from general public that male members are also entering the ladies compartment of EMU train, was checking EMU along with Head Constable of Police, RPF, on 17.03.2012. At about 10.30 a.m., he found two ladies (A1 and A2) getting down from the first class compartment of



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the EMU train carrying bags with them. P.W.9 enquired them and they confessed that they are carrying Ganja. He immediately took them to Mambalam Out post RPF Police Station, Chennai and informed Narcotic Control Bureau (in short NCB) officials.

3.2. Thiru.K.R.Srikanth (P.W.3), the then Intelligence Officer, NCB, Chennai, on receipt of intimation from P.W.9, reduced it into writing and forwarded to Thiru.R.Rakesh Kumar (P.W.7), the then Superintendent of Police, NCB, Chennai.

3.3. A police team was formed and they went to Mambalam RPF Station and enquired A1 and A2. They explained to them about their right of search before a Magistrate or a Gazetted Officer as contemplated under Section 50 of NDPS Act and the accused gave their consent for searching by the NCB officials. Both the accused admitted that they are carrying Ganja with them and a search was conducted and 23 packets of Ganja in six bags were recovered under the cover of a mahazar (Ex.P9). A sample of 25 grams from each packet was taken out and they were



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marked as 'S' series (M.O.14 to M.O.25). The remaining Ganja were packed separately and were marked as 'P' series (M.O.1 to M.O.13).

3.4. Summons were issued to both the accused to appear before the NCB Officials and were arrested and remanded to judicial custody. In their statements, under Section 67 of NDPS Act, both A1 and A2 had confessed that they were travelling along with two other ladies by name Rani (A3) and Rathi (A4) and both of them on seeing the police personnel made good their escape from Mambalam Railway Station. They had also stated that they carried one bag of Ganja for handing over the same to one Varasanattu Deivam (A5) for a sum of Rs.1,000/-.

3.5. Rathi (A4) and Varasanattu Daivam (A5) were arrested subsequently by NCB Officials and were confined in Central Prison, Madurai.

3.6. After completing investigation, NCB Officials laid a final report before the Special Judge, II Additional Special Court under NDPS



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Act, Chennai in C.C.No.35/2012. Since A3 and A4 absconded their case was split up in C.C.No.63/2013. In the mean while, Varasanattu Daivam (A5) died and the charges against her got abated. Subsequently, Rathi (A4) was once again added in C.C.No.35/2012 as she was apprehended by police.

3.7. The learned trial court judge after analysing the evidence on record convicted the accused 1 and 2 for the offences punishable under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and sentenced them as stated in Paragraph No.2, vide his judgment and orders dated 28.02.2017. The fourth accused was acquitted of all charges.

4. Heard Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the State, Ms.S.Varshini, learned Legal Aid Counsel appearing for the respondents 1 and 2 and Ms.S.Vasavi Sridevi, learned Legal Aid Counsel appearing for the third respondent.

5. Mr.N.P.Kumar, learned Special Public Prosecutor appearing



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for the State contended that though 61.300 kgs of Ganja were recovered from A1 and A2, the trial court has not convicted them for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(C) of NDPS Act (commercial quantity). It is also his contention that when A1 and A2 were categorical in stating that A3 and A4 also accompanied them in EMU train on the date of their arrest and were carrying Ganja, the trial court was wrong in acquitting the fourth accused on the technical ground that the NCB Officials did not record her statement separately under Section 67 of NDPS Act. He therefore prayed for convicting all the three accused for the offences punishable under Section 8(c) r/w.20(b)(ii)(C) of NDPS Act.

6. Per contra, Ms.S.Varshini, learned Legal Aid Counsel for the respondents 1 and 2 and Ms.S.Vasavi Sridevi, learned Legal Aid Counsel for the third respondent would contend that it was established that A1 and A2 were carrying only one bag each in their hands and therefore, they cannot be found guilty of carrying commercial quantity of Ganja. It is also her submission that both A1 and A2 had already



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undergone the sentence inflicted upon them by the trial court.

7. It is seen from the records that the NCB Officials recorded 67 statements of A1 and A2 on the date of occurrence i.e. on 17.03.2012. which reads thus :

"பின்னர் ராணி எனக்கும் ஜானகிக்கும் ஒரு டிக்கட் கொடுத்தார். ராணி என்னிடத்தில் மற்றும் ஜானகியிடமும் இவள் 4 Bag மற்றும் இரண்டு பைகளில் கஞ்சா வாங்கி வைத்திருப்பதாகவும், ஆளுக்கு ஒரு பேக் எடுத்துக் கொண்டு train-ல் பெருங்களத்தூர் சென்று அனைவரும் தேனீக்கு பஸ் மூலம் செல்லலாம் என்று கூறினார். அதன்படி மேற்கூறிய கஞ்சாவை தேனீக்கு கடத்திச் சென்று வரசநாட்டு தெய்வத்திடம் ஒப்படைத்த பின்பு எங்களுக்கு ரூபாய் 1000 தருவதாக கூறினார். அதன்படி சுமார் 10 மணிக்கு நான், ஜானகி, ராணி மற்றும் ரதி நால்வரும் கஞ்சா இருக்கும் பைகளையும் மற்றும் துணிமணிகள் அடங்கிய இரு பைகளையும் எடுத்துக் கொண்டு train-ல் ஏறினோம். இரயில் மாம்பலம் இரயில் நிலையத்தில் நின்றபொழுது சில நபர்கள் நாங்கள் அமர்ந்திருக்கும் பெட்டி முதல் வகுப்பு என்பதை கூறி எங்களை இறங்கி இரண்டாம் வகுப்பு பெட்டிக்கு செல்லுமாறு கூறினார். அதைத் தொடர்ந்து நாங்கள் மாம்பலம்



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இரயில்நிலையத்தில் இறங்கும்பொழுது சில இரயில்வே போலீசார் எங்களை அணுகி எங்களைப் பற்றியும், எங்களது உடமைகள் பற்றியும் விசாரித்த பொழுது நானும் மற்றும் ஜானகியும் எங்களது பெயர்களை தெரிவித்தோம் மற்றும் எங்களிடம் கஞ்சா என்கிற போதை பொருள் உள்ளது என்றும் தெரிவித்தோம். அந்த சமயத்தில் ராணியும், ரதியும் அவர்கள் கையிலிருந்த 2 Bag-ஐ அப்படியே எங்கள் பக்கம் வைத்துவிட்டு கூட்டத்தில் கலந்து ஓடிவிட்டனர்"

From the above statement, it is clear that at the time of apprehending A1 and A2 in Mambalam Railway Station, both were found in possession of Ganja. However, they have stated that they were carrying only one bag of Ganja and other bags belonged to Rani (A3) and Rathi (A4) who made good their escape in the Mambalam Railway Station on seeing the police personnel. The NCB Officials had seized Ganja from six bags which measured $12.800 + 12.600 + 12.100 + 14.100 + 4.200 + 5.500 = 61.300$ kgs. The maximum weight of Ganja in one bag is thus 14.100 kgs. Therefore, the accused 1 and 2 cannot be said to be in possession of commercial quantity of Ganja which as per the Act is more than 20



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kilograms. In fact, the NCB officials arrested Rathi (A4) and Varasanattu Daivam (A5) and the case against Rani (A3) was split up in C.C.No.63/2013. Therefore it cannot be stated that A3 to A5 are imaginary persons. The trial court had analysed the evidence of the prosecution and also the statements of A1 and A2 recorded by the NCB Officials under Section 67 of NDPS Act and found them guilty of the offence for possessing Ganja which cannot be more than 14.100 kgs. It is also in the evidence that the accused 1 and 2 were carrying Ganja for a paltry sum of Rs.1,000/-. It is to be pointed out that the NCB Officials had not taken steps to know the source of procurement of Ganja by A1 to A4 and the person to whom A5 would be handing over the same.

8. Drug menace is a world wide problem. With such stringent laws in India to curb the menace, we have not been able to go to the root of the problem. NDPS officials in most of the cases book only the carriers and never go beyond it. The source and the destination (as to who intends to procure it in large scale) are never probed into and no concerted efforts to nab the 'real culprits' are made.



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9. Tmt.Rathi (A4) was arrested and was remanded to judicial custody but her statement under Section 67 of NDPS Act was not recorded by the NCB Officials. The NCB Officials mainly relied on the statements of A1 and A2 for convicting the fourth accused. The fourth accused had not been apprehended by the police while carrying Ganja and she was subsequently arrested based on the confessions of A1 and A2. The trial court had also gone into this aspect and had concluded that A4 cannot be convicted for the offences punishable under Section 8(c) r/w. 29 of NDPS Act, merely based on the confession of A1 and A2.

10. It is settled that confession of a co-accused is a very weak piece of evidence and it does not come within the definition of evidence as contemplated under Section 3 of the Indian Evidence Act, since it is not required to be given on oath, nor to be given in the presence of the accused. It cannot also be tested by way of cross examination. In these circumstances, based on the Section 67 statement of A1 and A2 it is difficult to convict A4 and the trial court by a well reasoned order had



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convicted the accused 1 and 2 for the offences punishable under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and acquitted the fourth accused. I do not see any reason to interfere with the judgement and orders passed by the trial court judge.

11. In the result,

- i. The Criminal Appeal is dismissed
- ii. The judgment and orders dated 28.02.2017 passed in C.C.No.35/2012 by the Special Judge, II Additional Special Court under NDPS Act, Chennai, is confirmed.
- iii. This Court places on record its appreciation to Ms.S.Varshini and Ms.S.Vasavi Sridevi learned Legal Aid counsels, for their valuable assistance in deciding this case. The High Court Legal Service Committee shall pay their fees in accordance with rules.

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Index : yes/no

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Speaking /Non speaking Order
mtl

Copy to

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

To

- 1.The Special Judge, II Additional Special Court under NDPS Act, Chennai.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

mtl

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