

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

CRL.A.No.48 of 2006

AGAINST THE JUDGMENT IN SC 240/2005 of II ADDL.SESIONS COURT,
ERNAKULAM DATED 15-12-2005

APPELLANT/ACCUSED:

SURENDRAN, AGED 54,
S/O. PADMANABHAN, MANGALATH HOUSE,
NEAR LEPROSY HOSPITAL, THIRUMARADI KUNNU,
KORATTY VILLAGE.

BY ADV. SRI.C.P.UDAYABHANU.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.48 OF 2006

Dated this the 21st day of December, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act. He was found guilty and was therefore convicted and sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.10,000/- with default clause of simple imprisonment for six months. Set off as per law was allowed.

2. According to prosecution version, on 14.10.2004, while PW3 was functioning as Sub Inspector of Panangad Police Station, he received an information through telephone that at Vytila Junction on the eastern side of National High Way near K.R. Bakers, a person was standing with ganja in his possession. PW3 entered the information in the GD and sent a report to his superior officer. Ext.P3 is the said report. He then left the station along with team of officers to the spot where the person

was stated to be standing and on reaching the place, they found a person standing with a yellow plastic cover. As soon as the Police approached the accused, he tried to escape from the place which was effectively prevented. Since he did not disclose the contents of the plastic bag, PW3 revealed his identity and the information he received to him. He also informed the accused that he could seek the presence of a Magistrate or a Gazetted Officer since his body was going to be searched. On his demand that a Gazetted Officer must be present, PW2 was brought to the spot who is the Circle Inspector of Excise Department. On search in the presence of Gazetted Officer namely, PW2 and on seizure of the plastic cover, the plastic cover was seen to contain two small plastic packets. Those packets were opened and the contents were examined and PW3 was satisfied that it was ganja. Arrest memo, Ext.P4 was prepared and the inspection report of body search is Ext.P5. A balance was procured and on weighing the contraband article, one of the packets weighed 2.25 kg and the other packet weighed 990 gm.

3. PW3 claims to have taken 25gm from each of the

packets as samples and those samples were sealed and labeled and it was numbered as S1, S2, S3, S4. He would also say that the balance ganja which he secured was also sealed and labeled. Those packets were numbered as P1 and P2. The plastic covers were numbered as P3. PW3 then claims to have taken sample signature of the accused, witnesses and PW3 on a paper. He also says that sample seal was provided in another paper. Those were put in a packet and numbered as P4 and Ext.P1 mahazar was prepared. He returned to the station and registered Crime No.292/2004 as per Ext.P6 First Information Report. He sent Ext.P8 report to his superior officer.

4. On getting the report, PW4 took over investigation. He admitted that Ext.P8 was the report sent to him. He visited the place of occurrence and prepared Ext.P10 scene mahazar. He had recorded the statement of witnesses and had the samples sent for chemical analysis. The forwarding note preferred to court is Ext.P11. The site plan obtained from the Village Officer is Ext.P12 and the chemical analysis report received is Ext.P13. He completed the investigation and laid charge before court.

5. The court before which final report was laid took cognizance of the offence and on appearance of accused, copies of documents were given to him and all formalities were complied with. To the charge under Section 20(b)(ii)(B) of NDPS Act, accused pleaded not guilty and claimed to be tried.

6. The prosecution therefore had PWs 1 to 4 examined and Exts.P1 to P14 marked. M.O.s 1 to 4 were got identified and marked.

7. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

8. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He had Ext.D1 marked.

9. Mainly relying on the evidence of PW3, the detecting officer and the various documents produced, court below was convinced that offence has been proved beyond reasonable doubt and accordingly convicted and sentenced the accused as already

mentioned. The said conviction and sentence are assailed in this appeal.

10. Learned counsel appearing for the appellant contended that there is clear violation of Sections 42 and 57 of NDPS Act which are mandatory in nature. If that be so, the entire proceeding is bad. These provisions are made for the interest of the accused in mind and therefore their compliance is mandatory. Even though PW3 would say that he has complied with the said provisions, there is no evidence regarding the same. To be more precise, learned counsel pointed out that no documents namely, Exts.P3 and P8 have been received by the superior officer and there is no evidence regarding the same. When no such evidence is produced before court, the only conclusion drawn is that the documents have not been sent to the superior officer and there is non compliance of Sections 42 and 57 of NDPS Act.

11. Learned Public Prosecutor, on the other hand, pointed out that PW3 has categorically stated that he has complied with Sections 42 and 57 of NDPS Act and that is evident from Ext.P8. It is pointed out that it is not suggested to PW3 that Exts.P3 and

P8 have not been sent by him. In the light of Exts.P3 and P8, it is idle for the appellant to contend that there has not been compliance of Sections 42 and 57 of NDPS Act. Learned Public Prosecutor pointed out that no grounds are made out to interfere with the findings of the court below.

12. After having heard the learned counsel for the appellant, learned Public Prosecutor and also after having perused the records, it is felt that there is no substance in the contentions raised by the learned counsel for the appellant.

13. PW3 is the detecting officer. He speaks about having received reliable information regarding the accused engaged himself in the sale of ganja. PW3 has categorically stated that he has entered the information which he had received in the GD. He then says that he along with his team of officers went to the place where the accused is standing. Even though he tried to run away, that was prevented and he was asked what is in his possession. No satisfactory explanation was offered for the same. PW3 would say that he had informed the accused that he intended to search the accused and about his right to have the

presence of a Magistrate or Gazetted Officer. Accused opted for the latter. PW2 was brought to the spot.

14. PW2 would say that he, as per the request of PW3, had reached at the place where the accused was detained and it is in his presence that search of body of accused was conducted and ganja seized. Even though PW2 was cross examined at length, nothing could be brought out in his evidence to show that he was not present at the relevant place at the relevant time.

15. Coming to the violation of the two provisions namely, Sections 42 and 57 of NDPS Act, Section 42 confers power on the officer mentioned in the section for search, seizure and arrest without warrant. Section 42(2) says that the officer concerned is to inform his superior officer about the matter. Ext.P3 is the report prepared and sent by PW3 to his superior officer namely, PW4. It speaks about the information received by PW3 and the report sent regarding the matter and informing that he is going to the place where the accused was engaged in nefarious activities. On going through Ext.P3, it satisfies all the requirements under Section 42 and therefore there is compliance

of the said provision.

16. Equally without basis is the contention based on Section 57 of NDPS Act. It is contended that there is no material to show that on detection, within 48 hours, the officer concerned has filed a report to his superior officer. Ext.P8 is the document which says about the information said to have been given by PW3 to PW4. It is interesting to note that PW4 admits having received Ext.P8 document and he also says that on the basis of the said report, he took over the investigation of the case. It is therefore evident and clear from the evidence of PWs 3 and 4 that both Sections 42 and 57 have been complied with. A contention to the contrary cannot be countenanced.

17. As rightly pointed out by the learned Public Prosecutor, there is nothing to show that PW3 was inimical towards the accused. The accused was caught red handed.

18. In the light of the evidence adduced in this case, it is difficult to say that the prosecution has failed to establish the case against the accused. The lower court has appreciated the evidence in considerable detail and has come to the right

conclusion that the prosecution has established the case beyond reasonable doubt and the accused is guilty of the offence. No grounds are made out to interfere with the said findings.

This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.