

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

CRL.A.No.1118 of 2006

AGAINST THE JUDGMENT IN SC 14/2005 of II ADDL.SESSIONS COURT,
ERNAKULAM DATED 08-06-2006

APPELLANT/ACCUSED No.1:

SAJEEVAN, S/O.CHANDRAHASAN,
MADATHULLY PARAMBU HOUSE, C.C.48/215, ELAMAKKARA DESOM,
EDAPPALLY SOUTH VILLAGE.

BY ADV. SRI.P.T.JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP. BY S.I. OF POLICE, MATTANCHERRY POLICE STATION
ERNAKULAM, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 1118 of 2006

Dated this the 16th day of November, 2015.

JUDGMENT

Two persons were prosecuted for the offences punishable under Sections 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act. Among them, the second accused absconded and his case was split up and refiled as S.C. 110 of 2006. The first accused alone stood trial. He was found guilty. He was therefore sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.15,000/- with a default sentence of simple imprisonment for three months.

2. The prosecution case in brief is that on 4.9.2002 while P.W.1, then functioning as Sub Inspector of Police Mattancherry Police Station, was during his station duty, he received a phone call from one of the members of the Special Squad constituted for the purpose of preventing sale of narcotic drugs, to the effect that two persons have been

detained near Kumar patrol pump for having indulged in sale of ganja. P.W.1 entered the information received in the GD, sent the intimation to his higher officer and with the kit for sampling, he along with two other officers went to the place of occurrence. When they reached Kumar patrol pump, on the northern side of the road, two persons were seen intercepted by police officers. On questioning them, it was revealed that one of them is Sajeevan and the other person is a native of Andhra Pradesh. Both of them were seen carrying plastic bag. On enquiring about the contents, they revealed that it was ganja. They were informed that for their body search, they are entitled to seek the presence of a gazetted officer, if they so choose. They exercised their right and P.W.1 sent intimation for the presence of a gazetted officer. In pursuance to the intimation so given, P.W.4, Excise Circle Inspector reached the place. He, after having searched P.W.1 and his colleague, permitted search of the body of the accused in his presence.

The plastic bag possessed by accused Nos. 1 and 2 were seized from them and its contents were examined. On finding that they were in possession of the contraband article as per Ext.P2 arrest memo, first accused was arrested and so also the second accused. The contraband were seized and Ext.P3 mahazar was prepared. Ganja in the possession of the first accused weighed 1.150 kg., out of that 50 gm was taken in two packets and were taken as sample and they were tied and labelled as S1 and S2. The balance ganja and the plastic bag were sealed and labelled and that too contained the signature of the accused, P.W.1 and the witnesses. The ganja in the possession of the second accused was 1.140 kg out of that 50 gm was taken in two packets as sample, numbered the same as S3 and S4 and were properly tied and labelled. The label contained the signatures of the accused, independent witnesses and P.W.1. Thereafter, he returned to the station with the contraband article, accused and the records and

registered crime as per Ext.P4 FIR. After preparing Ext.P5 list of articles, he produced the accused, document and the contraband article before the court on the next day. He had also sent an intimation to his superior officer and that is Ext.P7.

3. P.W.5 was the then Circle Inspector of Police who is alleged to have received the intimation sent by P.W.1. P.W.5 took over investigation on 6.9.2002. He prepared the scene mahazar Ext.P8. He recorded statements of various witnesses and had the samples sent for chemical analysis. Ext.P10 is the chemical analysis report. P.W.5 completed investigation, and laid charge before court.

4. The court, before which final report was laid, took cognizance of the offences as S.C. 14 of 2005. The case was made over to II nd Additional Sessions Court, Ernakulam for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the

offences punishable under Section 22(b)(ii)(B) of NDPS Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 7 examined and had Exts.P1 to P10 marked. They also had M.Os. 1 to 7 were got identified and marked. After the close of the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they were innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C., they were asked to enter on their defence. They chose to adduce no evidence.

5. The court below accepted the evidence of P.Ws. 1, 2 and 5 and also the contemporaneous document Ext.P3 mahazar and was satisfied that on the basis of those items of evidence, the prosecution has succeeded in establishing the case against the accused. Resultantly conviction and sentence

as already mentioned were passed.

6. The conviction and sentence are assailed in this appeal on the ground that the court below has not appreciated the evidence in the proper perspective and had it been done, it would have been found that there are contradictions and inconsistencies in the evidence of P.Ws. 1 and 2 and that make their evidence unbelievable and unworthy of credit and their version should have been discarded.

7. Learned Public Prosecutor very vehemently contended that the court below was impressed by the evidence of P.Ws. 1, 2, 4 and 5 and also the contemporaneous document and the prompt production of the articles before court to find the accused guilty of the offence. It is therefore stated that no grounds are made out to interfere with the finding of the court below.

8. Admittedly the detection and seizure of the contraband article from the accused persons were rest on the

testimony of P.Ws. 1, 2 4 and 5. Their evidence is also supported by Ext.P3 seizure mahazar prepared at the spot and also the chemical analysis report.

9. It is necessary to refer to the evidence of P.Ws. 1 and 2 in this regard. P.W.1 at the relevant time was the Sub Inspector of Police, Mattancherry Police Station. It appears from his evidence that City Police Commissioner had constituted a special squad to enquire into such nefarious activities. According to him, on 4.9.2002, P.W.1 received a call from one of the members of that Squad informing him that two persons have been detained near Kumar Patrol Pump who were suspected to have possessed the contraband article. P.W.1, after entering the relevant information in the GD and also after making sure that due intimation is sent to the superior officer, proceeded to the place along with other officers. When they reached the place, they found two persons standing on the northern side of the patrol pump

being intercepted by the police. Each of them had a plastic cover in their hands. On enquiry, it was revealed as ganja. P.W.1's evidence is to the effect that he wanted to search the body of the accused persons and informed them about the statutory right of having the presence of a gazetted officer or Magistrate as the case may be. The accused persons expressed their desire to have the presence of a gazetted officer and therefore P.W.1 secured the presence of P.W.4 and their body was searched. The plastic covers they were carrying were seized and on enquiry it was found to be ganja. Quantity of ganja the first accused was carrying was 1.150 kg and the second accused was carrying 1.140 kg. Ext.P2 arrest memo was prepared and both the accused were taken into custody. P.W.1 also prepared Ext.P3 mahazar and thereafter returned to the police station and registered crime as per Ext.P4 FIR. He prepared Ext.P5 property list and also Ext.P6 forwarding note and produced the contraband articles before the court.

Further investigation was done by P.W.7.

10. P.W.2 gave a similar version as given by P.W.1. There is no inconsistency or contradiction in their evidence regarding detection of the offence. Even though these witnesses were cross-examined at length, nothing could be brought out in cross-examination. There is nothing to show that they have any ill-will against the accused or they had any oblique motive to falsely implicate the accused. There is nothing to doubt their version. Of course, there are certain minor inconsistencies and contradictions in their evidence, but due allowance could be given to the fact that the incident had occurred six years ago. It is significant to notice that in the evidence of P.Ws. 1 and 2, there is no significant departure from the prosecution case and they stick to the prosecution case in total.

11. P.W.4 is the gazetted officer who was brought to the place of occurrence on demand made by the accused

persons that they wanted the presence of a gazetted officer for body search. According to P.W.4, he arrived at the scene on getting intimation from the officer. He saw two persons standing there restrained by police officers. P.W.1 introduced P.W.4 to the accused persons. He conducted search of the body of P.W.1 and then P.W.1 searched the body of the accused persons and the bag in their possession was seized. According to P.W.4, P.W.1 seized ganja weighing 1.150 kg from the cover carried by the first accused and had taken two samples from that content as SI and SII. From the second accused, 1.140 kg was recovered and two samples were taken as SIII and SIV from the contraband so seized. After taking sample, the rest of ganja was packed and sealed.

12. A reading of the evidence of P.W.4 shows that it is in tune with the evidence of P.Ws. 1 and 2. It is in his presence that the body search was made by P.W.1. Strictly speaking, there is no question of body search as the

contraband articles were seized from the bag in the possession of the accused. It is well settled that the bag which is carried by the accused persons does not form part of the body and there is no need to have the presence of a gazetted officer.

13. P.W.7 is the Investigating Officer. He says about the intimation received by him from P.W.1 and he took over investigation on 6.9.2002. He speaks about having preferred the forwarding note and having questioned the witnesses and laid charge before court after completing investigation.

14. Ext.P3, the seizure mahazar gives in detail what had transpired at the place of incident and that corroborates and confirms what P.Ws. 1 and 2 had stated before court. Further, prompt production of the articles before court lends credence to the prosecution case. The chemical analysis report Ext.P10 shows that the article seized was ganja.

15. Even though the learned counsel appearing for the appellant tried to contend that the article seized is not ganja, it is belied by Ext.P10.

16. A perusal of the evidence shows that all statutory requirements have been complied with and found that the contraband articles were seized from the possession of the accused. Prosecution has succeeded in proving that the offence has been made out.

17. Considering the quantity of the article seized, the sentence imposed is just and proper.

This appeal is without merits and it is liable to be dismissed. I do so confirming the conviction and sentence passed by the trial court.

P. BHAVADASAN,
JUDGE

sb.