

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

CRL.A.No. 678 of 2009

AGAINST THE JUDGMENT IN SC 26/2007 of SPECIAL COURT (NDPS ACT
CASES), VADAKARA DATED 01-01-2009

APPELLANT/PETITIONER/ACCUSED:

MUNEER K.M.,
AGED 45 YEARS, S/O P.K.KADERKUTTY, SOUDA MANZIL,
PURATHAYIL VARAM.

BY ADVS.SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.T.P.SAJID
SMT.M.A.SULFIA
SRI.P.U.SHAILAJAN

RESPONDENTS/COMPLAINANT:

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1. STATE, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. CIRCLE INSPECTOR OF POLICE,
KANNUR CITY.

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.678 OF 2009

Dated this the 23rd day of November, 2015.

J U D G M E N T

The accused in this case was prosecuted for the offences punishable under Sections 18(c) and 21(b) of Narcotic Drugs and Psychotropic Substances Act. He was found guilty on both counts and accordingly, he was convicted and sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.25,000/- under Section 18(c) with default clause of rigorous imprisonment for six months and was also sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.25,000/- under Section 21(b) with default clause of rigorous imprisonment for six months. The substantive sentences were directed to run consecutively. Set off as per law was allowed.

2. The incident in this case is said to have occurred on 20.05.2006. PW1, on the relevant date, was working as Circle Inspector of Police, Kannur City. According to the prosecution, PW1 received instructions from the Superintendent of Police that

at a place called Purathiyil coming under the Chakkarakallu Police Station, a person by name Khader resides with his son Muneer and Muneer was nabbed with 12 kg of Opium from Rathlam in Madhya Pradesh and the police had arrested him. In pursuance thereof, the Superintendent of Police directed PW1 to search the house of the accused. PW1 prepared report under Section 42 of NDPS Act and sent the same to his superior officer which is marked as Ext.P1. He along with PW5 and others reached the place. Khader, the father of Muneer was present there. He was informed about the visit of police officers and search was conducted. They found that on the first floor at the western end, a room was seen kept locked. The father of the accused told them that it was the room used by the accused. Since the key was not available, the door was pushed open. PW1 speaks in detail about the various articles seized from that place which need not be repeated in this judgment. It is sufficient to say that samples were taken from each of the separate articles found on the room. Search list prepared is Ext.P2. Thereafter PW1 returned to the police station and registered crime as per Ext.P3 First Information Report. The articles and the samples were

produced before court on the next day and Ext.P4 is the property list.

3. PW1 took up investigation and sent Ext.P6 detailed report under Section 57 N.D.P.S Act to Deputy Superintendent of Police and as part of investigation, the house of wife of the accused was also searched. The search memo prepared for that purpose is Ext.P7. They were able to recover a book containing the map of India and also the names of various places at Rajasthan. That was seized as per Ext.P8. PW1 went to the scene of incident and prepared Ext.P9 scene mahazar. The ration card produced before him was seized as per Ext.P10. He recorded the statement of witnesses and on 31.05.2006, after getting permission from the court at Rathlam which had remanded the accused into custody, accused was formally arrested as per Ext.P11 arrest memo. Subsequent investigation was done by PW10. He obtained chemical analysis report Ext.P16, completed the investigation and laid charge before court.

4. The court before which final report was laid took cognizance of the offence and after complying with necessary

formalities, charge for offences under Sections 18(c) and 21(b) of NDPS Act was framed. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 10 examined and Exts.P1 to P16 marked. M.O.s 1 to 10 were got identified and marked.

6. 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.

7. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He examined DW1.

8. The court below, mainly based on the evidence furnished by PWs 1 and 5 and the contemporaneous document, came to the conclusion that the offence has been established and accordingly convicted and sentenced the accused as already mentioned.

9. Assailing the conviction and sentence, learned counsel appearing for the appellant contended that the court below has

not analysed the evidence in the proper perspective and they simply followed what has been stated by PWs 1 and 5 without ascertaining whether there is any independent evidence to corroborate the evidence of PWs 1 and 5. It is also contended that there is nothing to show that the house exclusively belonged to the accused and therefore, the court below could not have fastened liability on the accused if at all any contraband was found in his house. Unless it is shown that the premises was in the exclusive possession of the accused, it was not proper for the court to find the accused guilty. Finally, it was contended that at any rate the sentences ought to have been directed to run concurrently and there was no justification to direct them to run consecutively.

10. Learned Public Prosecutor, on the other hand, contended that the evidence of PWs 1 and 5 are consistent, cogent and convincing enough and there is no ambiguity on their evidence. They gave uniform version of the incident. They say about the information received from the Superintendent of Police, going to the place and seizing of contraband, taking of samples, preparation of documents etc. It is also pointed out that the

documents and the contraband were promptly produced before court. The accused had been formally arrested from Madhya Pradesh and brought down to the State. All formalities have been completed and there is nothing to show that there is any manipulation or fabrication of documents. Moreover, according to the learned Public Prosecutor, the court below was convinced that the evidence of PWs 1 and 5 are convincing enough and are sufficient to warrant a conviction. Accordingly, it is contended that there are no grounds made out to interfere with the conviction and sentence.

11. As rightly pointed out by the learned counsel for the appellant, detection of offence and further proceedings taken solely based on the testimony of PWs 1 and 5. PW1 is the Circle Inspector of Police and PW5 is the Sub Inspector of Police. Both of them do give a consistent and uniform version regarding the incident. PW1 says about having received information from the Superintendent of Police regarding the nabbing of accused with Opium at Madhya Pradesh and directing search of his house. It is in pursuance to the direction, search was conducted by PW1 and other officers. Ext.P2 is the search list which gives the details of

the articles seen at the place of occurrence and seized by them. PW5 speaks in detail about sampling done by him and also labeling the sample. It is significant to notice that both Sections 42 and 57 of NDPS Act have been complied with by PW5. As part of search of the house of the accused, search of the house of the wife of the accused was also conducted. Except for a book containing the map of India and certain names of places in Rajasthan, nothing else were recovered.

12. The contention raised by the learned counsel for the appellant that there is nothing to show that the accused was in exclusive possession of the house from where the contraband was seized may look attractive at the first blush. But, at the time when PWs 1 and 5 went to the house where search was conducted, Khader, father of accused, was present there. What is important is that one room was seen locked. Khader told the officers that it was the exclusive room used by the accused. Since no key was available, the door was pushed open. It is from there that contraband articles were seized.

13. True, independent witnesses examined by the prosecution have turned hostile. But they have admitted their

signatures in some of the documents. It is not the law that evidence of police officers or excise officers as the case will always have to be corroborated by independent evidence. If the evidence of the official witnesses are found to be convincing enough and inspires confidence in the mind of court, there is no reason as to why it should not be accepted. It would be imprudent on the part of court to reject all those items of evidence on the basis that there is no evidence corroborating their version. After all corroboration is a rule of prudence and not a rule of law. The accused has no case that the officers had any ill motive to falsely implicate him in the case. As rightly pointed out by the learned Public Prosecutor, the evidence furnished by PWs 1 and 5 are consistent and convincing enough. Even though they were cross examined at length, nothing was brought out in their evidence to discard the prosecution version. Therefore, there is no reason as to why their evidence should not be accepted. It is not as if that the evidence of PWs 1 and 5 has not been corroborated at all. The contemporaneous documents Exts.P2, P4 etc and prompt production of seized articles and documents before court further confirm the fruitfulness of the

prosecution case.

14. It was the above facts which have persuaded the court below to come to the conclusion that the offences had been made out. It could not be said that the findings are either perverse or contrary to the evidence on record. The conviction for the offences has necessarily to stand. The sentence imposed also appears to be reasonable in the nature of the articles seized.

15. Faced with the above situation, learned counsel appearing for the appellant contended that the direction that the sentences shall run consecutively is too harsh and is not warranted by the facts and circumstances of the case. He has already undergone more than seven years of imprisonment and it is only proper that he be given an opportunity to reform himself and the sentences may be directed to run concurrently.

16. After having given anxious consideration to the above submission, it is felt that there may be some substance in the relief sought for by the learned counsel for the appellant. True, the offences under both Sections 18(c) and 21(b) of NDPS Act have been made out. The article seized is Opium. The activity needs to be curbed. But that does not mean that sentence has to

be unduly harsh.

For the above reasons, while upholding the conviction and sentence passed by the court below for the offences under Sections 18(c) and 21(b) of Narcotic Drugs and Psychotropic Substances Act, the direction that the sentences shall run consecutively is substituted by stating that the sentences shall run concurrently. If the substantive sentences are to run concurrently, the period of imprisonment is already over and so also the default clause sentence in respect of fine imposed for each offence. The convict shall be released forthwith unless wanted in any other case.

This Criminal Appeal is disposed of as above.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.