

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 454 of 2013 ()

AGAINST THE JUDGMENT IN SC 1567/2009 of ADDITIONAL SESSIONS COURT
(ADHOC)-II, KOLLAM DATED 29-12-2012

APPELLANT:

SASIDHARAN PILLAI, C.NO.7652, CENTRAL PRISON, TRIVANDRUM-12

BY ADV. SHERLY.S.A. (STATE BRIEF)

RESPONDENT:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR

R1 BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.454 of 2013
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Dated this the 9th day of December, 2015

JUDGMENT

The sole accused, who was convicted in S.C.No.1567 of 2009 for offence punishable under Section 20(b)(ii)(B) of the NDPS Act, is the appellant herein. The prosecution case was that on 10.06.2009 at about 10 a.m., while PW4 the Excise Inspector along with his party was on a regular patrol duty, they came across the accused who was carrying a plastic bag. On seeing the party, he got perplexed. Immediately, he was intercepted and the bag was searched. It was found to contain a packet which presumably contained ganja. Since the Detecting Officer proposed to have a body search of the accused, the right of the accused to have a search conducted in the presence of the Judicial Magistrate or a Gazetted Officer was conveyed to him. He refused to have the benefit of such an officer. However, the presence of PW3 was procured by sending a letter to him through a police guard. Thereafter, body search was conducted. From the contraband

which was weighed 1.75kgs, a sample of 25 gm was separated. After the process of wrapping, labelling and preparation of the contemporaneous documents, he was taken to the excise office. After completion of the formalities, he was produced before the magistrate. Investigation was conducted by PW6, who completed the investigation and laid charge before the Court. The accused faced the trial. On the side of the prosecution, PWs.1 to 7 were examined and Exts.P1 to P7 were marked. MOs.1 and 2 were identified. Learned Sessions Judge, on an evaluation of the available materials, found the accused guilty, convicted and sentenced him to undergo simple imprisonment for 5 years and to pay a fine of Rs.10,000/- in default of which, he has to undergo rigorous imprisonment for three months.

2. The accused who was undergoing sentence has preferred this appeal. On his request, Mrs.Sherly S.A., Advocate was appointed as learned counsel on State Brief. Heard the learned counsel and Mr.Abhijith Leslie, learned Public Prosecutor.

3. The prosecution, essentially relied on the oral testimony of PWs1, 2, 3, 4, 5 and 7 to prove the guilt of the accused. PW4 is the Detecting Officer and PWs.1 to 3 and 5 are the

official witnesses. PW7 claimed to be an independent witness. However, he did not support the prosecution case in any manner, except admitting his signature in Ext.P1 seizure mahazar.

4. PW4, the Detecting Officer gave evidence in accordance with the meticulous details mentioned in Ext.P1 seizure mahazar. The version of PW4 was substantially corroborated by PWs.1 and 2 who were the members of the excise team. PW5 was another member of the excise team. All the above three witnesses substantially gave evidence without much inconsistency and infirmities in the evidence. PW3 was the Excise Circle Inspector who was brought to the scene to witness the body search as contemplated under Section 50 of the NDPS Act. He also deposed in terms of the prosecution case.

5. Ext.P1 is the seizure mahazar, which contained the complete details of the process of interception, search, sampling, labelling and preparation of the contemporaneous documents. This documentary evidence is supported by the other contemporaneous documents which are Exts.P2, P3 and P4. Ext.P5 is the seizure report and Ext.P6 is the occurrence report which was prepared subsequently. Pursuant to the request of the prosecution, the

sample was forwarded to the forensic science lab and Ext.P7, FSL report was received. It shows that the sample which was forwarded was ganja. It is also recorded that seal was found to be in tact and it tallied with the sample seal.

6. Mrs.Sherly S.A., learned counsel on State Brief attacked the prosecution case contending that the official witnesses alone substantiated the prosecution case. It is true that the witnesses who supported the prosecution were the official witnesses alone. However, the quality of evidence tendered by them has to be appreciated in the background that they are official witnesses. The entire evidence is consistent, free from any doubt and is sufficient to inspire confidence in the mind of the Court. Even though, PW7 who was claimed to be the independent witness did not support the prosecution case, he admitted that he had signed the seizure mahazar. He had no case that he had signed on a blank paper. In fact, he has also stated that he had not seen the recovery of the contraband and that, he had signed as directed by the excise party. There is no reason as to why the excise party should project a false evidence, especially, when the presence of the witness at the spot is admitted.

7. The evidence on record also indicates that the samples and the contraband reached the Court without any substantial delay. It is also seen that the sample was forwarded to the forensic lab. It is true that there is considerable force in the argument of the learned counsel on State Brief that the forwarding note was not produced. However, Ext.P1 seizure mahazar bears the sample seal. The available materials also indicate that the sample reached the Court in a sealed condition and the sample seal on that tallied with the seal on the seizure mahazar. In the above circumstances, I am not inclined to give much credence to the argument of the learned counsel that non-production of the forwarding note is fatal to the prosecution case.

8. The defence set up by the accused was a case of total denial. However, the available evidence is sufficient to hold that the defence set up by the accused is without any merit. The court below has properly appreciated the records, especially the oral testimony corroborated by the contemporaneous documents. I find no reason to hold that the prosecution had failed in proving the prosecution case.

9. Regarding the sentence, learned Public Prosecutor on instructions submitted that the accused who was in jail from the date of his arrest had completed his term and was released on completion of the sentence on 10.09.2014. Hence, the question of a reduction in sentence is only academic now. Hence, it is only to be held that the sentence already undergone by him is treated as in complete satisfaction of the sentence imposed by the court below. I find no reason to interfere in the sentence and conviction.

In the result, the appeal fails and is dismissed confirming the conviction and sentence.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge