

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 391 of 2014 ()

AGAINST THE JUDGMENT IN SC 29/2012 of SPL. COURT (NDPS ACT CASES),
VATAKARA DATED 29-03-2014
CRIME NO. 549/2012 OF PERINTHALMANNA POLICE STATION, MALAPPURAM

APPELLANT/ACCUSED :

SANKAR
S/O. VELUCHAMI, COBYE ROAD, IInd WARD
DOOR NO.23, UTHAMAPALAYAM, KAMBAM
THENI, TAMIL NADU.

BY ADV. SRI.NIREESH MATHEW

RESPONDENTS/COMPLAINANT AND STATE :

1. THE SUB INSPECTOR OF POLICE
PERINTHALMANNA POLICE STATION
MALAPPURAM DISTRICT-673 001.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29.09.2015,
THE COURT ON 07.10.2015 DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.391 of 2014
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Dated this the 7th day of October, 2015

JUDGMENT

The sole accused, who stands convicted in Crime No.549 of 2012 of Perinthalmanna Police Station for offence punishable under Section 20(b)ii(B) of the NDPS Act, is the appellant herein.

2. The allegation of the prosecution is that on 11.05.2012 at about 5.30p.m, the accused was found in possession of 4.250 kgs of ganja by PW1, the Sub Inspector of Police. He had received a previous information about the alleged involvement of the accused, who was reported to be standing near the road side carrying a bag. He was intercepted and after complying with the formalities, search was conducted. It was revealed that he was carrying 1.650kgs of ganja in a bag. He had also wrapped two plastic sheets around his both legs below the knee, each of which contained 1.300 gms of ganja each. A total of 4.250kgms were recovered from him. After completion of all formalities, he was taken to the police station and crime registered. PW7 conducted investigation and laid the charge.

3. Before the court below, the accused pleaded not guilty and demanded trial. On the side of prosecution, PWs.1 to 7 were examined and Exts.P1 to P11 were marked. MOs.1 to 6 were

identified. Learned Sessions Judge on an evaluation of the available materials found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,00,000/- and in default, to undergo rigorous imprisonment for two more years under Section 20(b)ii(B) of the NDPS Act. The accused has assailed this conviction and sentence in this appeal.

4. Heard both sides and examined the records.

5. The prosecution is essentially relying on the oral testimony of the Detecting Officer as PW1. His evidence is corroborated by PW2, the Excise Circle Inspector; PW3, the independent witness and PW5, who is a police constable who accompanied PW1. PW1 deposed that he got a confidential information that one person was found carrying a bag at the scene of occurrence and it was informed that the bag contained ganja. He immediately informed in writing to his superior officer and thereafter, proceeded with the party to the spot. Accused was identified and he was apprised of his right to be examined in accordance with the statutory provision. He demanded search by a Gazetted Officer. Thereafter, a requisition was sent to PW2 who was the Excise Circle Inspector. He reached the spot and thereafter, the search was conducted.

6. PW1 in his version had narrated in detail about the process of interception, search, sampling and sealing. This tallies with Ext.P4, the seizure mahazar. Ext.P2 arrest memo and Ext.P3 inspection memo are the contemporaneous documents. PW2 the Excise Circle Inspector also deposed that he got a written requisition whereupon, he proceeded to the spot. He also deposed in accordance with the versions spoken by PW1.

7. PW3 claimed that he had witnessed the search and seizure. He has also admitted his signature on the seizure mahazar. PW5, a Police Constable who was accompanying PW1, has also substantially given evidence in accordance with the version of PW1. The versions of PW1, PW2, PW3 and PW5 indicate that except certain minor contradictions, no substantial omission or contradiction were brought out in their versions. They get sufficient corroboration from the entries in Ext.P4 seizure mahazar. The process of arrest is corroborated by Exts.P2 and P3.

8. To substantiate the case of the prosecution that there was compliance of Section 42 of the NDPS Act, learned Public Prosecutor relied on the version of PW1, Ext.P1 and the oral testimony of PW7. PW1 deposed that after getting the secret information he had addressed Ext.P1 to PW7. PW7 acknowledged

the receipt of it. Evidently, there is nothing to believe that there was infraction of Section 42 of the NDPS Act.

9. PW1 deposed that he had offered to the accused a search in the presence of a Gazetted Officer. This was availed by the accused. Thereafter, PW2 was requisitioned to the spot. PW2 has also mentioned about the search in his presence, in accordance with all due formalities, to ensure a proper and effective search.

10. Learned counsel for the accused vehemently contended that the versions spoken by PW1, PW2, PW3 and PW5 are artificial and does not inspire confidence. I am not inclined to accept this contention since the version of the above persons completely tallies with the contemporaneous documents and there is nothing to show that there was any material contradiction or omission or that the quality of evidence tendered through them were inferior, as not to inspire confidence.

11. It was vehemently contended by the learned counsel for the accused that evidence on record indicates that the accused is a Tamilian. It is also brought on record that he had admitted that he does not know Malayalam. In spite of it, the process of search and seizure was conducted by communicating to him through one Muralidharan, who was a Tamil knowing Police Constable in the

party. Learned counsel contended that, that has resulted in lack of communication with the accused, who could not understand the implication of various activities involved and thereby caused substantial prejudice to him. It is true that the said Police Constable has not been examined. However, there is nothing to show that the translation offered to the accused was improper or that there was any communication gap. It appears that the accused had participated and co-operated with the search and seizure. There is apparently nothing to doubt the version of the witnesses. Hence, I am not inclined to discard the version of all the witnesses, on the only ground that the translator was not examined.

12. Evidently, Ext.P6 property list reached the Court without any delay. Ext.P7 is the detailed report which the Investigating Officer had forwarded to his superior officers. The forwarding note was forwarded to the chemical analysis lab resulting in Ext.P11 chemical examination report. It proves that the sample which was forwarded was ganja. Hence, the prosecution has succeeded in proving that the sample which was drawn from the contraband articles reached the Court without considerable delay, in a sealed condition, which was thereafter forwarded to the chemical analysis lab. There is nothing on record to show that there was any

tampering or interpolation in the meanwhile. Hence, the prosecution has succeeded in proving the search, seizure and recovery of contraband articles and thereby the guilt of the accused.

13. Court below after finding the accused guilty, had imposed a substantive sentence of 8 years rigorous imprisonment and a fine of Rs.1,00,000/- with a default clause of two years. The court below has considered the fact that the accused was involved in another case as well and the fact that very substantial quantity was recovered from him. It is also pertinent to note that the mode in which it was attempted to be transported is also a circumstance which cannot be lightly seen. However, considering all attending circumstances, I feel that the sentence of 8 years rigorous imprisonment and the default clause of two years due to non-payment of fine is excessive and is liable to be scaled down. I feel that the substantive sentence of rigorous imprisonment for five years will serve the interest of justice. The accused shall also pay fine as ordered, in default of which, he shall undergo simple imprisonment for six months. This will satisfy the interest of justice.

In the result, the appeal is allowed in part. While confirming the conviction, sentence is modified to that of rigorous imprisonment for five years for the substantive offence found

against the accused. He shall also remit the fine of Rs.1,00,000/-, in default of which, he shall undergo simple imprisonment for six months. He is entitled for set off for the period during which he was in jail, during trial.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge