

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

CRL.A.No. 614 of 2014 ()

AGAINST THE JUDGMENT IN SC 56/2012 of SPL. COURT (NDPS ACT CASES) ,
VADAKARA DATED 07-03-2014

CRIME NO. 449/2009 OF NILAMBUR POLICE STATION , MALAPPURAM

APPELLANT/ACCUSED:

MUHAMMAD @ MANU AGED 54 YEARS
S/O MOIDEEN (LATE) , POTHANGOTAN HOUSE, KAKKUMVALLI
MAMBATTUMoola, CHOKKAD AMSOM, MALAPPURAM DISTRICT.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682031

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.614 of 2014
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Dated this the 4th day of November, 2015

JUDGMENT

The sole accused who stands convicted for offence punishable under Section 20(b)ii(B) of the NDPS Act by the Sessions Court (Special Judge NDPS Act Cases), Vadakara is the appellant herein.

2. The prosecution alleged that the S.I. of Nilambur on 28.09.2009 got a secret information that an identifiable person in possession of ganja was standing at a specified place. After preparing an intimation to the C.I. of Police, Nilambur, he immediately proceeded with the party to the scene. On reaching the spot, a person, satisfying the identification marks conveyed to him, was found near a bridge. He was immediately intercepted and identity of the Detecting Officer was disclosed. He also disclosed his intention to have the body search of the accused, whereupon he declined to accept the offer to have the presence of judicial magistrate or a gazetted officer and opted that Detecting Officer himself can conduct the search. Thereupon, body search was conducted and from the plastic bag which he was carrying,

1.47 kgs of ganja was recovered. Samples were drawn, packed in separate packets, sealed, labelled and contemporaneous documents were prepared. He was arrested at the spot and thereafter, crime was registered. He was produced along with the contraband articles before the Court. Investigation was conducted and after its conclusion, final report was laid for offence punishable under Section 20(b)ii(B) of the NDPS Act.

3. Pursuant to the summons, the accused appeared and denied the charges. He faced the trial. On the side of the prosecution PWs.1 to 7 were examined, Exts.P1 to P13 were marked and MOs.1 to 5 were identified. Court below on an evaluation of all the inputs found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,00,000/- with a default sentence of two years. Aggrieved by the above conviction and sentence, appellant has preferred this appeal.

4. Heard both sides and examined the records.

5. The prosecution is relying on the oral testimony of PW4, Detecting Officer corroborated by the evidence of the independent witnesses PW3 and two other police constables, who

were accompanying the Detecting Officer as PWs.6 and 7. Relying on the above versions, learned Public Prosecutor contended that the prosecution had succeeded in establishing the guilt of the accused. PW4 in his evidence had deposed about the information received by him, the interception that followed, the sampling, packing, labelling and preparation of the contemporaneous documents. He has given a detailed version regarding the entire process which ultimately resulted in the arrest of the accused. His version is in conformity with the version found in Ext.P3 seizure mahazar. It also tallies with another contemporaneous document, which is Ext.P4 arrest memo.

6. PW3 the independent witness has also deposed, which in substance, is in conformity with the evidence tendered by PW4. PWs.6 and 7 are the police constables attached to the same station. On an evaluation of evidence of PWs.3, 4, 6 and 7, it is clear that the prosecution case have been uniformly and consistently stated by all the witnesses.

7. Learned counsel for the accused contended that the evidence tendered by the witnesses are unreliable and are not sufficient to inspire confidence. Even though all the witnesses

were cross examined in detail, except for minor contradiction regarding the exact place where the search was conducted as deposed by PW3 and regarding the colour of the bag which was searched, no other material contradiction have been brought out. The contradictions pointed out by the learned counsel for the accused are only minor or trivial in nature. The version of the witnesses also did not indicate any inherent contradiction or omission with respect to their previous statement given to the Investigating Officer.

8. Learned counsel further contended that there was infraction of Sections 42 and 50 of the NDPS Act. Ext.P5 is the report sent by the Detecting Officer in relation to the compliance of Section 42 of the NDPS Act. The Detecting Officer has mentioned that immediately on receipt of the information, he recorded it and thereafter forwarded to PW5, C.I. of Nilambur. This part of his version is not seriously challenged. It is true that the relevant extract of the GD entry has not been produced. That is not sufficient to doubt the compliance of Section 42 of the NDPS Act, in so far as this part of the oral testimony stands unchallenged.

9. PW4 in his evidence had deposed that on interception of the accused, he was informed about his right to have the presence of judicial magistrate or a gazetted officer at the time of search. Exts.P6 and P10 are the documents to support the version of PW4 in this regard. Ext.P10 is stated to be the signed letter bearing the handwriting and signature of the accused. Ext.P6 is the intimation in writing given by PW4 regarding the compliance under Section 50 of the NDPS Act. Corresponding entries are seen in Ext.P3 seizure mahazar as well as in Ext.P7 FIR. Learned counsel for the accused relying on Exts.P3 and P7 contended that though PW4 had stated that the reply of the accused in relation to the proposal under Section 50 was given in writing, it does not find a place in Exts.P3 and P7. I am not inclined to accept it, though, it has not been mentioned explicitly in both the documents that the accused has given reply in writing, the records clearly show that the reply given was made on record. This impliedly indicates that the refusal by the accused was given in writing. The evidence of PW4 that he had expressed his offer for due compliance under Section 50 of the NDPS Act gets sufficient corroboration from Exts.P6 and P10 coupled with the entries in

Exts.P3 and P7. Evidently, Section 50 of the NDPS Act has been duly complied with.

10. Ext.P8 is the report sent under Section 57 of the NDPS Act. The records also indicate that the accused, contraband and Ext.P9 property list reached the Court without much delay. The samples were forwarded for chemical analysis by Ext.P11 forwarding note. Ext.P13 is the result of the chemical analysis which indicates that the sample was ganja. It also states that the samples were received in sealed condition and intact and tallied with the sample seal. Evidently, the samples which were drawn at the scene of occurrence were properly sealed and it reached the Court without much delay and thereafter, it reached the chemical analysis lab intact without any interpolation. Even the learned counsel for the accused did not raise any serious objection regarding the process of sampling as well as sealing.

11. In the light of the above materials, the finding of the court below that the prosecution had succeeded in proving the guilt of the accused is unassailable. The statutory formalities and the mandatory requirements under the NDPS Act have also been complied with. Hence the conviction entered into by the court

below is only to be sustained.

12. The court below after finding the accused guilty has imposed a sentence of rigorous imprisonment for 5 years and to pay a fine of Rs.1,00,000/- with a default sentence of rigorous imprisonment for two years. Learned counsel for the accused vehemently contended that having regard to the maximum sentence imposed by the Statute, in so far as it relates to intermediary quantity, the sentence imposed herein is on the higher side. Evidently, the sentence appears to be on the higher side. It appears that the court below had taken note of the fact that the accused was granted bail at the crime stage and in the meanwhile, he got involved in another case as S.C.No.28 of 2012. He was produced in L.P.Case No.1 of 2012. Though there are indications that the accused is involved in other case, there is absolutely nothing on record to show that the other case ended in conviction. Though while moulding the sentence involved in another crime and repetition of the crime has been considered, still, having regard to the attending circumstance, the sentence imposed appears to be on the higher side. The substantive sentence of two years will serve the interest of justice coupled

with a fine of Rs.50,000/- with a default sentence of simple imprisonment for three months. This will serve the interest of justice.

In the result, the appeal is allowed in part. In modification of the judgment of the court below, while confirming the conviction, sentence is modified to rigorous imprisonment for a period of of two years and to pay a fine of RSs.50,000/- (Rupees fifty thousand only), in default of which, he shall undergo simple imprisonment for three months. It is submitted by the learned counsel for the accused that the accused, though granted bail, was not released on bail, since he could not deposit the portion of the fine amount as ordered by this Court. If the accused has completed the modified sentence and his continued detention is not required in connection with any other crime, he shall be released from jail forthwith.

Sd/-

SUNIL THOMAS
Judge

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