

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

CRL.A.No. 1354 of 2013 (A)

AGAINST THE JUDGMENT IN SC 33/2008 of SPL. COURT (NDPS ACT CASES),
VADAKARA DATED 05-09-2013

APPELLANT/ACCUSED:

K.A CHANDRAN
S/O. AYYAPPAN, KUZHIVELIL HOUSE, CHETTAPPALAM.P.O.
PULPALLY, WAYANAD DISTRICT, NOW RESIDING AT MOHANAM
POOPARAMBA, KIZHAKKEDATH MEETHAL ROAD, MAKKADA
KAKKODY, KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/COMPLAINANT AND STATE :

1. THE SUB INSPECTOR OF POLICE
ELATHUR POLICE STATION, KOZHIKODE DISTRICT.

2. THE CIRCLE INSPECTOR OF POLICE,
NADAKKAVU, KOZHIKODE DISTRICT.

3. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1 : TRUE COPY OF the ORDER DTD 19.09.2013 PASSED BY
THE COURT OF the SPECIAL JUDGE (NDPS ACT CASES)
VATAKARA IN CRL.M.P.NO.424/2013.

RESPONDENTS EXHIBITS: NIL

True Copy

P A to Judge

SUNIL THOMAS, J.

Crl.A. No. 1354 of 2013

Dated this the 6th day of November, 2015

JUDGMENT

The sole accused, who stands convicted in S.C.No.33/2008 of the Special Judge(NDPS Cases), Vatakara, for offence punishable under Section 20(b)ii(B) of the NDPS Act, is the appellant herein.

2. The prosecution case was that on 26/2/2008 at about 5.15 p.m., the detecting officer, who was the circle inspector of Nadakkavu police station, got reliable information that one person was supplying narcotic drugs on a motor cycle at a specified place. Immediately, he addressed a communication to the concerned Assistant Commissioner of Police and proceeded to the spot with the party. On the way, he saw one person riding a motor cycle bearing registration No. KL-11-AA/7510. He was intercepted and informed that the detecting officer had reliable information that he was in possession of narcotic drugs or such other substances and he proposed to conduct a body search and that the person has a right to be searched in the presence of the judicial magistrate or the

gazetted officer. He refused to avail the opinion and suggested that the detecting officer himself can conduct the body search. In the course of the body search, from the right pocket of his pant, a small packet was retrieved which was found to be brown sugar. It had a weight of 278.5 grams. Two samples of two grams each were drawn from it, packed, sealed and fixed with labels. Rs.9,000/- and two mobile phones with SIM cards were recovered from his possession. He was thereafter arrested. He deposed that he possessed a house in the near vicinity and offered to show the further contraband items kept concealed in his house. He led the party to his house. Search resulted in recovery of another packet containing 242.5 grams of brown sugar, from which four grams were separated for two samples. A packet of ganja weighing 1.595 k.g. was also recovered. Samples of 20 grams were drawn from it. A weighing machine, plastic covers and other items for dealing with the contra band articles were also recovered. Contemporaneous documents evidencing the seizure of the contra band articles were prepared at the respective places. Thereafter, the FIR was registered. The accused, along with the contraband articles,

were produced before the court. After investigation, final report was laid for offences punishable under Sections 21(b) and 20 (b)ii(B) of the NDPS Act.

3. The accused denied the allegations and faced trial before the Sessions Court. On the side of the prosecution, PW1 to PW10 were examined and Exts.P1 to P22 series were marked. MOS 1 to 10 were identified. The court below, on an evaluation of the entire materials found the accused guilty, convicted and sentenced him to undergo RI for six months and a fine of Rs.10,000/- with a default of one month for offence punishable under Section 21(a) of the NDPS Act in relation to the brown sugar. Regarding the offence punishable under Section 20 (b) ii (B) of the NDPS Act, he was convicted and sentenced to undergo RI for nine years and to pay a fine of Rs. 1,00,000/- and in default, to undergo RI for one more year.

4. This is under challenge in this appeal. Heard both sides and examined the records.

5. The allegation against the accused was sought to be established by the prosecution on the basis of the oral testimony of PW3, detecting officer, PW6 Head Constable attached to the

Anti Narcotic Drugs Squad and PW4 an independent witness. Oral testimony was sought to be corroborated by Exts.P9 and P10 seizure mahazars and other contemporaneous documents in the nature of the arrest memo marked as Ext.P7. According to the prosecution, initially brown sugar was recovered from the possession of the accused on a public road and thereafter his admission led to the recovery of further brown sugar and ganja from his nearby house. Exts.P13 and P14 are the list of properties of all the articles recovered allegedly from the accused. Both are dated 27/2/2008. They reached the court on 28/2/2008. Thereafter, samples were forwarded. Exts.P14 and P21 were copies of the respective forwarding notes. Ext.P22 is the chemical analysis report which shows that samples were brown sugar and ganja respectively. It also stated that samples reached the chemical analysis lab in sealed cover and it corresponded with the sample seal. Evidently, the samples, which were received by the prosecution were established as drugs under the NDPS Act.

6. PW3 the detecting officer has given a detailed version regarding the information received by him during interception,

search and drawal of samples from the brown sugar. He has also deposed about the information that led to the search at the house and further recovery of brown sugar, ganga, weighing machines and other implements used for packing of the items for the purpose of sale. PW3 had given a detailed and meticulous version regarding the process of interception, drawing of samples, packing, sealing and affixing of labels. Version of PW3 is completely in conformity with the detailed recitals in Exts.P9 and P10. This version spoken by him is further in conformity with Exts.P7 arrest memo and Ext.P8, inspection memo. PW6 was the head constable attached to the Anti Narcotic Special Squad. He also gave details regarding the search, seizure and other connected activities. PW4 is an independent witness, who also supported the prosecution case.

7. A perusal of the version of the above three witnesses clearly show that though they were thoroughly cross examined, no contradiction or omission were brought out. Their version was completely in uniformity with the Contemporaneous documents. Though the accused had set up a case of total denial stating that he had no drug business, that he had not

taken any house on rent as alleged by the prosecution and that the mobiles were recovered from him under threat, no evidence supporting the accused could be brought out in the cross examination.

8. One of the stand of the prosecution was that the accused was found riding on a motor cycle No.KL-AA/7510. PW2 is the RC owner of that vehicle. He deposed that he had given the above vehicle to the accused for riding, as a close friend. He had also offered to remit monthly installments towards the loan of the above vehicle. After interception and production before the police, the vehicle was released by executing Ext.P2 kychit. Documents in relation to the vehicle were released to him on executing Ext.P3 kychit. Thereafter, motor cycle and the documents were released to him from the court on execution of Ext.P4 kyhit. Version of PW2 also corroborated the case of the prosecution that the accused was in possession of the above vehicle, which was allegedly used for the purpose of dealing with the drugs.

9. The allegation of the prosecution was that one part of the offence was allegedly committed at the house of accused,

from where some other contra band articles were also recovered. PW5 is the owner of the above building. He produced Ext.P15 agreement of letting. It shows that it was let out to one Ravi. PW4 was a person who was involved in the transaction. He deposed that the building was let out to one Ravi by Ext.P15. He identified the accused in the court as the said Ravi. The investigating officer has also deposed that on investigation, it was revealed that the house was taken on rent by the accused under the false name of Ravi. Even though the learned counsel for the accused vehemently contended that the building was let out to one Ravi and the accused had no relation to that, the evidence of PW3 and PW5, undoubtedly proved that the accused had taken the building on rent under a false name.

10. The learned counsel contended that there were infraction of Sections 42,50 and 57 of the Act. Ext.P5 is the report sent by the detecting officer to the Assistant Commissioner of Police. There is nothing to hold that no such notice was sent. It proves due compliance of Section 42 of the NDPS Act. PW3 in his evidence has stated that after interception, the accused was informed about his intention to

have the body searched and the accused was informed about his right to be searched in the presence of the judicial magistrate or gazetted officer. The accused allegedly declined to accept the offer and offered himself to be examined by the detecting officer himself. Ext.P6 is the notice in writing. It is seen signed by the accused. Ext.P12 is the report sent by the detecting officer to the Assistant Commissioner of Police on 26/2/2008. It was received by the office ACP (North) on the same day and acknowledged it as above. This proves due compliance of Section 57 of the NDPS Act. Hence, I am inclined to hold that there was no infraction of any of the mandatory provision of law.

11. An evaluation of the entire evidence shows that the prosecution had succeeded in proving due recovery of the contra band articles from the accused. The court below on a correct appreciation of facts held that, the quantity of brown sugar seized fell within Section 21(a) since quantitative analysis has not been done. This necessarily lead to an irresistible finding that the accused had committed offence punishable under Section 21(a) and 20(b)ii(B) of the NDPS Act. Conviction entered into by the court below is hence liable to be confirmed.

12. Learned counsel for the accused contended that the sentence imposed is highly excessive. In relation to the recovery of brown sugar, the court below has imposed a sentence of six months and a fine of Rs. 10,000/- only. However, with respect to the possession of ganja, he had been imposed with sentence of RI for 9 years and fine of Rs. 1,00,000/- with default sentence to undergo RI for one year. Learned counsel contended that this is highly excessive.

13. It is pertinent to note that maximum intermediary quantity is 20 kg, for which maximum sentence liable to be imposed is RI for ten years. However, the accused was found in possession of brown sugar as well as ganja. Evidently, allegation against the accused is serious. However, considering the quantity involved, sentence imposed by the court below may appear to be on the higher side. But he was in possession of brown sugar as well as ganja. There is indication in the judgment itself that the accused committed the present crime while he was on bail in another case. Records shows that the accused was apprehended on 26/2/2008 and continued to be in custody during the proceedings before the trial court, which

culminated in his conviction. Thereafter, he preferred an appeal and order passed by this Court shows that though the bail was granted to him, he was not released immediately and had to approach this court for further relief and by order dated 24/9/2013 he had been released. Evidently, he had been in continuous custody at least for five and half years.

14. From the entire facts and circumstances, I feel that this will be sufficient sentence and an opportunity can be given to the accused for reformation. Hence, the sentence already undergone will be treated as sufficient substantive sentence including the default sentence for non payment of fine. Hence, the sentence imposed by the court below is modified accordingly.

15. In the result, the appeal is allowed in part. While maintaining the conviction, the sentence imposed by the court below is modified to that of the period already undergone by him as sufficient imprisonment inclusive of the default sentence. The bail bond executed by him stands discharged.

The appeal is allowed in part accordingly.

Sd/-

SUNIL THOMAS

Judge

/true copy/ PS to Judge.

dpk

