

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 9.12.2015

DELIVERED ON : 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.608 of 2015
& M.P.No.1 of 2015

Sudarsan @ Basha Appellant/Accused

vs.

State Rep. By
The Inspector of Police,
R.3, Ashok Nagar Police Station
Chennai 83 ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment made in C.C.No.10 of 2015 dated 24.08.2015
on the file of the Principal Special Judge for NDPS ACT, Chennai.

For appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 24.8.2015 passed in
Calendar Case No.10 of 2005 by the Special Judge for NDPS Act,
Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 3.8.2014 at about
2 p.m., a secret information has been received by the Inspector
of Police, Ashok Nagar Police Station to the effect that both
accused are vending Ganja and accordingly on the same day, the
Sub Inspector of Police and others have gone to the place of
occurrence. The first accused has escaped from the place of
occurrence and the second accused has been found in possession
of 1.200 Kgms., of Ganja and subsequently, a report has been
given to the Inspector of Police and a case has been registered
under section 8(c) r/w 20(b)(ii)(B) of NDPS Act in Crime No.951
of 2014.

3. The Inspector of Police, viz., P.W.4, has conducted investigation and after completing the same, laid a final report on the file of the trial court and the same has been taken on file in Calendar Case No.10 of 2015.

4. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed necessary charge under the said section against both accused and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 4 have been examined and Exhibits P.1 to 11 and Material Objects 1 to 3 have been marked.

6. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found the second accused guilty under Section 8(c) r/w 20(b) (ii)(B) of NDPS Act and sentenced him to undergo 6 months Rigorous Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the second accused as appellant.

8. The learned counsel appearing for the appellant/2nd accused has contended that in the instant case, no independent witnesses have been examined with regard to search and seizure in the place of occurrence. Further, the samples have been sent very belatedly for chemical examination. Further, the Constable, who has handed over the samples in Forensic Science Department has not been examined and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/second accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

9. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, specific evidence of Sub Inspector (P.W.2) is that in the place of occurrence, he endeavoured to get private persons as witnesses, but nobody has come forward and therefore P.W.2 and another Constable have been shown as witnesses and there is no interdiction in law in

showing them as witnesses and the trial court, after considering the available evidence on record, has rightly found the appellant/second accused guilty under the section mentioned in the judgment and therefore, the conviction and sentence passed by the trial court do not warrant interference.

10. The consistent case put forth on the side of the prosecution is that on 3.8.2014 at about 2 p.m., the second accused/appellant has been found in possession of 1.200 Kgms. of Ganja without having licence.

11. The Sub Inspector of Police has been examined as P.W.2 and the concerned Constable has been examined as P.W.2. During the course of cross-examination, P.W.1 has candidly admitted that he has not prepared the documents in the place of occurrence. But P.W.2 has stated in his evidence that only Sub Inspector of Police has prepared all the documents in the place of occurrence. Therefore, with regard to Seizure Mahazar and Observation Mahazar, a vital contradiction is found place.

12. The occurrence has taken place on 3.8.2014, but the contraband has been sent to the chemical examination on 18.8.2014. The contentions put forth on the side of the appellant/second accused is that the Constable, who handed over contraband for chemical examination, has not been examined.

13. It is true that P.W.3 has given evidence to the effect that contraband is nothing but Ganja, but in the instant case, it has already been pointed out that there is no concrete evidence with regard to Observation Mahazar as well as Seizure Mahazar. Further, no independent witness has been examined on the side of the prosecution. It is a settled principle of law that evidence of police officials can also be relied upon, provided their evidence is trustworthy. But, in the instant case, as stated in many places, even contradictory evidence is available with regard to Mahazar as well as Seizure Mahazar. Considering the nature of contradictions available on the side of the prosecution, the Court cannot come to a conclusion that the alleged contraband has been seized from the appellant/second accused in the place of occurrence. Since the said aspect has not at all been clearly established on the side of the prosecution, the Court can very well come to a conclusion that the prosecution has failed to prove its case.

14. The trial court, without considering the vital infirmities found on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/second accused and therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant/second accused in Calendar Case No.10 of 2015 by the trial court are set aside. The appellant/second accused is acquitted. Fine amount, if any paid by him, is ordered to be refunded forthwith. Consequently, the connected Miscellaneous Petition is closed.

Sd/
ASSISTANT REGISTRAR (CCC)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ajr

To :

1. The Principal Special Judge for NDPS ACT, Chennai.
2. The Inspector of Police,
R.3, Ashok Nagar Police Station
Chennai 83
3. The Public Prosecutor, High Court, Chennai
4. The District Collector, Chennai
5. The director General of Police, Mylapore, Chennai
6. The Superintendent , Central Prison, Puzhal, Chennai
7. The Section Officer,
CRL Section, High Court, Madras

Crl.A.No.608 of 2015

CO-RSK
JD 23/12/2015

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