

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.614 of 2008

1. A. Balakrishnan @ Bala (A1)
 2. Koothaiah Yogarajan @ Yoga @ Rajan (A2)
 3. M. Seeni Mohammed @ Seeni (A4)
- ... Appellants/Accused No.A1,A2/A4
- Vs.

State by
The Intelligence Officer
Narcotics Control Bureau
South Zonal Unit
Chennai

... Respondent /Complainant

Criminal Appeal under Section 374(2) of Cr.P.C., against the judgment in C.C.No.136 of 2005 dated 07-07-2008 by the Principal Special Judge, Special Court under EC & NDPS Act, Chennai convicting the first and second appellants for offences under Section 8(C) read with 21(c), 28 and 29 of the NDPS Act and the third appellant for the offences under Section 8(C) read with 28 and 29 of the NDPS Act and sentencing the first and second appellants to undergo rigorous imprisonment for 10 years and a fine of Rs.1 lakh for each offence and in default of the fine amount to undergo further rigorous imprisonment for six months for each offence and sentencing the third appellant to undergo rigorous imprisonment for 10 years and a fine of Rs.1 lakh for each offence and in default of the fine amount to undergo further R.I for six months for each offence.

For appellants :: Mr. N.S. Rameshdurai for AA1 & A2
for M/s. T.K. Sampath Associates
and K.S. Suresh
Mr. M.S. Charles for A4

For respondent :: Mr. N. P. Kumar, Spl.P.P. for NCB cases

JUDGMENT

This criminal appeal has been directed against the convictions and sentences dated 07-07-2008 passed in C.C.No.136 of 2005 by the Principal Special Judge, Special Court under EC and NDPS Act, Chennai.

2. The case of the prosecution is that on 19-02-2005, the Intelligence Officer, Narcotic Control Bureau, Chennai has laid a complaint. On the basis of the said complaint, a raid has been conducted and accordingly, the present accused and others are found in possession of 2 KG of heroin and subsequently, a report has been filed on the file of the Trial Court and the same has been taken on file in Calendar Case No.136 of 2006.

3. The Trial Court after considering documents available on record has framed the charge under Sections 8(C) read with 21(c) of the NDPS Act, 1985 and also under Sections 8(C) read with 28 and 29 of the NDPS Act and the same has been read over and explained to the accused. The accused have denied the charge and claimed to be tried.

4. The Trial Court on the basis of available evidence on record has found the accused Nos.1 and 2 guilty under Section 8(C) read with Sections 21(c), 28 and 29 of the said Act and sentenced to undergo ten years' R.I., and also imposed a fine of Rs.1,00,000/- for each Section. Likewise, the fourth accused has been found guilty under Sections 28 and 29 of the NDPS Act and sentenced him to undergo 10 years' R.I., and also imposed a fine of Rs.1,00,000/- for each section. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been filed by the accused Nos.1, 2 and 4.

5. The learned counsel appearing for the appellants have uniformly contended that they are not challenging the quantum of punishments imposed by the Trial Court. But the Trial Court has awarded six months' R.I. for each section as default sentence and since the appellants are not able to pay the entire fine amounts, some leniency may be shown in awarding default sentence. The learned Special Public Prosecutor appearing for the respondent has contended that the default sentence are not running concurrently along with substantive sentence and therefore, the claim made on the side of the appellant cannot be granted.

6. The only argument put forth on the side of the appellants/accused 1,2 and 4 is to reduce the quantum of default sentence awarded by the Trial Court.

7. It is an admitted fact that the Trial Court has awarded six months' R.I., for each Section as default sentence.

8. Considering the fact that the Trial has in aggregation awarded Rs.3,00,000/- upon the first and second accused and Rs.2,00,000/- upon the fourth accused, this Court is of the view to give leniency and also reduce the quantum of default sentence as stated infra.

In fine, this appeal is allowed in part. The convictions and sentences passed by the Trial Court are confirmed. However, the quantum of default sentence is reduced to two months' for each Section instead of six months'. Connected M.P.No.1/2014 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

glp

To

1. The Intelligence Officer
Narcotics Control Bureau
South Zonal Unit
Chennai
2. The Principal Special Judge,
Special Court under EC & NDPS Act, Chennai
3. The Special Public Prosecutor,
NCB Cases,
High Court, Madras
4. The Section Officer,
Criminal Section
High court, Madras.
5. The Superintendent
Central Prison,
Puzhal - 1, Chennai.

+1 cc to Mr.T.K.Sampath Associates, Advocate, sr.45145.

prv(co)
kra(28/08)

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