

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.1557 of 2003

Assistant Director
Directorate of Revenue Intelligence
17, Reynolds Road
Cantonment, Trichy - 1
(File No.VIII/48/14/93-DRI)

... Appellant

Vs.

1.DurgaShankar
2.Lala Mir Bahadur

... Respondents

Criminal Appeal under Section 378, Cr.P.C., to set aside the judgment dated 21-07-2003 in C.C.No.67 of 1995 passed by the Special Court for NDPS & EC Act cases at Salem and convict and sentence the respondent in accordance with law.

For appellant : Mr. N.P. Kumar

For respondent : Mr. B. Kumar, SC
for Mr. R. Rajarathinam for R2
Mrs. Usha Raman for R1

JUDGMENT

The order of acquittal dated 21-07-2003 passed in C.C.No.67 of 1995 by the Special Court for The Narcotic Drugs and Psychotropic Substances Act, 1988 and Essential Commodities Act, 1955 ('the Act' in short) cases, Salem are being challenged in the present criminal appeal.

2. The case of the prosecution is that on 15-05-1993, the present accused and some other accused are found in possession of 66.1kg of heroin worth of Rs.1,32,20,000/- (Rupees One crore thirty two lakhs and twenty thousand only) from a place by name Thalapallam Village, Salem District. Further on 17-05-1993, they are found in possession of 361.6kg of opium at Pudukottai. Under such circumstances, they have sought to have committed offences under Section 8(c) r/w 18, 21 and 29 of NDPS Act and amended by Act 9 of 2001.

3. On the basis of the accusation made against the accused, a charge has been framed under the said Section and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

4. On the side of the prosecution, P.Ws.1 to 19 have been examined and Exs-P1 to P110 and M.Os.1 to 11 have been marked.

5. When the accused have been questioned under Section 313 Cr.P.C., as respects the incriminating materials available in evidence against them, they denied the complicity of their crime. No oral and documentary evidence has been let in on the side of the accused.

6. The Trial Court after considering the arguments on both sides and upon perusing the available evidence on record has found the accused not guilty under the Sections mentioned in the charge and ultimately acquitted. Against the order of acquittal, the present criminal appeal has been preferred at the instance of the complainant as appellant.

7. The learned counsel appearing for the appellant has sparingly contended that in the instant case, replete/acceptable evidence is available on the side of the appellants so as to point out the guilt of the accused, but the Trial Court has not looked into the same and therefore, the order of acquittal passed by the Trial Court is liable to be interfered with.

8. The learned counsel for the respondents/accused have uniformly contended that in the instant case, even an iota of evidence is not available so as to point out the guilt of the accused punishable under Sections mentioned in the charge and the Trial Court after considering the lack of evidence on the side of the prosecution has rightly acquitted the accused and therefore, the acquittal passed by the Trial Court need not be set aside.

9. The consistent case put forth on the side of the prosecution is that on 15-05-1993 both the accused are found in possession of 66.1kg of heroin and likewise on 17-05-1993, both of them are found in possession of 361.6kg of opium.

10. For the purpose of proving the alleged guilt of the accused, P.Ws. 3 and 4 have been examined. Their statements have been marked. Both of them have been arrayed as accused Nos.1 and 2 in the main case. In fact, P.Ws.3 and 4 have not deposed evidence with regard to involvement of these accused in crime. Since P.Ws.3 and 4 have not given any piece of evidence so as to point out the guilt of the accused, the Court can easily come to a conclusion that virtually the prosecution has not adduced any evidence for the purpose of proving the alleged guilt of the accused.

11. Further, with regard to statements alleged to have been given by them their evidence is that they have put their signatures without knowing the contents of documents. Therefore, viewing from any angle, virtually, the prosecution has not adduced evidence so as to point out the guilt of the accused and the Trial Court has rightly acquitted the accused. In view of the discussion, this Court does not find any acceptable force in the

contentions put forth on the side of the appellant and the criminal appeal is liable to be dismissed.

In fine, the criminal appeal is dismissed. The order of acquittal passed by the Special Court for The Narcotic Drugs and Psychotropic Substances Act, 1988 and Essential Commodities Act, 1955 ('the Act' in short) cases, Salem in C.C.No.67 of 1995 dated 21-07-2003 is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

glp

To

- 1.The Special Court for NDPS and EC Act,
Salem.
- 2.The Directorate of Revenue Intelligence
17, Reynolds Road
Cantonment, Trichy - 1.
- 3.The Special Prosecutor for NDPS Act,
High Court, Madras - 104.

+1cc to Mrs. Usha Raman, Advocate, S.R.No.55266

+1cc to Mr.P.Solomon Francis, Advocate, S.R.No.54909

Criminal Appeal No.1557 of 2003

TEJ(CO)
CA(26/11/2015)

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