

BAIL SLIP

CRL.MP.NO.6786 OF 2004
IN
CRL.A.No.770 OF 2004

That the Appellant herein/Accused Viz Kumar @ Jayakumar was directed to be released on bail as per the order of this Court dated 22.06.2004 and made in CRL.MP.NO.6786 of 2004 in Crl.A.No.770 of 2004 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.770 of 2004

Kumar @ Jayakumar

vs.

... Appellant/Accused

The Inspector of Police
Prohibition & Enforcement Wing
Rasipuram Police Station
Rasipuram, Salem District
Crime No.357 of 2003

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the judgment in S.C.No.164 of 2003 on the file of Additional District and Sessions Judge (Fast Track Court No.III) Namakkal District dated 12.12.2003.

For appellant : Mr.P.Kumaresan

For respondent : Mr.R.Pratap Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been directed against the convictions and sentences dated 12.12.2003 passed in Sessions Case No.164 of 2003 by the Additional District and Sessions Court, Namakkal.

2. The crux of the case of the prosecution is that on 23.04.2003, at about 7 p.m., near Pattanam Eri, Rasipuram Taluk, the accused has sold illicit arrack and one Selvam has consumed the same

and subsequently found the arrack sold by the accused is nothing but poisonous arrack and subsequently the said Selvam has given a complaint and the same has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigation Officer has conducted investigation and after completing the same, laid a final report on the file of Judicial Magistrate Court, Rasipuram and the same has been taken on file in P.R.C.No.9 of 2003.

4. The Judicial Magistrate, Rasipuram, after considering the fact that the offences alleged to have been committed by the accused are triable by sessions court, has committed the case to the court of Sessions, Namakkal Division and taken on file in Sessions Case No.164 of 2003 and subsequently made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant records has framed a charge against accused under Section 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act (hereinafter called as "TNP Act") and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, Prosecution Witnesses 1 to 6 have been examined and Exhibits P.1 to 11 and M.Os.1 to 4 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing both sides and also upon perusing the relevant evidence on record has found the accused guilty under Section 4(1)(i) of the TNP Act and sentenced him to undergo 3 months Rigorous Imprisonment and also imposed a fine of Rs.500/- with usual default clause and the trial court also found the accused guilty under Section 4(1-A) of the TNP Act and sentenced him to undergo 4 years Rigorous Imprisonment and also imposed a fine of Rs.500/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has sparingly contended that the defacto complainant has been subjected to medical examination and the same has been done by the doctor (P.W.3) and his specific evidence is that the defacto complainant has refused to give urine and blood samples and under the said circumstances, it is not possible on the side of the prosecution to prove that the accused has sold poisonous arrack in the place of occurrence and further it is not possible on the side of the

prosecution to establish that the defacto complainant has consumed the same. The trial court, without considering the lack of evidence on the part of the prosecution has erroneously found the accused guilty under Section 4(1)(i) and 4(1-A) of the TNP Act and therefore, convictions and sentences passed by the trial court are liable to be interfered with.

10. The learned Government Advocate (Criminal Side) has contended that in the instant case, defacto complainant has been examined as P.W.1 and his specific evidence is that on the date of occurrence, he purchased liquor from the accused and consumed the same and subsequently he suffered from illness and further the evidence given by P.W.1 was encrusted by the medical evidence by way of examining P.W.3 and the trial court, after considering the overwhelming evidence available on record has invited the convictions and sentences against the appellant/accused under Section 4(1)(i) and 4(1-A) of the TNP Act and therefore, convictions and sentences passed by the trial court do not warrant interference.

11. Basing upon diverging contentions raised on either side, this Court has to look into as to whether the convictions and sentences passed by the trial court are factually and legally correct ?

12. The specific case of the prosecution case is that on 23.04.2003, in the place of occurrence, the accused has sold poisonous arrack to the defacto complainant and after consuming the same, the defacto complainant has suffered from illness.

13. At this juncture, it would be apropos to look into the evidence given by P.W.3. The specific evidence given by P.W.3 is that the defacto complainant has simply reported that he is having irritation in the throat and refused to give his urine and blood samples.

14. Since P.W.3 has given such kind of evidence, it is needless to state that the defacto complainant has refused to give urine and blood samples for the purpose of knowing that he has consumed poisonous liquor. Therefore, it is needless to state that the prosecution has failed to establish the alleged guilt of the accused punishable under Section 4(1)(i) and 4(1-A) of the TNP Act and the trial court, without considering the lack of evidence on the side of the prosecution, for the purpose of coming to a conclusion that the accused has committed the offence mentioned in the charge has erroneously invited the convictions and sentences against the appellant/accused as mentioned supra.

15. In view of the discussions made earlier, this Court is of the view that the argument put forth on the side of the appellant/accused is really having substantive force and ultimately, this criminal appeal deserves to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed by the trial court in Sessions Case No.164 of 2003 are set aside and the appellant/accused is acquitted and bail bonds if any executed by him shall stand cancelled and the fine amounts paid by him are ordered to be refunded forthwith.

-s/d-
Assistant Registrar (CSIV)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Inspector of Police
Prohibition & Enforcement Wing
Rasipuram Police Station
Rasipuram, Salem District

2.The Additional District and
Sessions Judge (Fast Track Court No.III)
Namakkal District

3. -do-Thro The Principal Sessions Judge,
Namakkal District.

4.The Judicial Magistrate
Rasipuram

5.-do-Thro The Chief Judicial Magistrate
Chief Judicial Magistrate, Salem

6.The Superintendent Central Prison Salem

7.The Public Prosecutor High Court Madras

+1 cc to Mr.P.Kumaresan Advocate sr.43900

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