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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**

CRL.A. (MD) Nos.186 and 187 of 2014

Thangadurai

: Appellant in Crl.A[MD].No.186 of 2014/1st Accused

Maria Siluvai

: Appellant in Crl.A[MD].No.187 of 2014/2nd Accused

Vs.

The State,
Represented by the Intelligence Officer,
Narcotics Control Bureau,
South Zonal Unit, Chennai 600 090.

: Respondent in Both Criminal Appeals/Complainant

PRAYER: Appeals filed under Section 374(2) of the Code of Criminal Procedure, to call for the records from the Lower Court and set aside the Judgment of the Lower Court passed in C.C.No.479 of 2006, dated 29.04.2014, on the file of the District and Sessions Court, for Communal Clash Cases, Madurai, by allowing these appeals.

For Appellants : Mr.M.S.Renganathan

For Respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor for NCB Cases

COMMON JUDGMENT

The appellant in Crl.A[MD].No.186 of 2014 is arrayed as Accused No.1 and the appellant in Crl.A[MD].No.187 of 2014 is arrayed as Accused No.2 in C.C.No.479 of 2006, on the file of the District and Sessions Court, for Communal Clash Cases, Madurai and they stood charged for the commission of offences under Sections 8(c) r/w 29, 8(c) r/w 21(c), 8(c) r/w 23(c) and r/w Section 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985, [hereinafter referred to as "the Act"]. The Trial Court, after full-fledged trial, vide impugned Judgment, dated 29.04.2014, had found both the accused guilty of the above said offences and imposed the following sentences:-

Accused	Sentenced under Section(s)	Quantum of substantive Sentence	Quantum of fine	Sentence in default of payment of fine
A1 & A2	8(C) r/w 29 of the NDPS Act	14 years RI	Rs.1,00,000/-	one year SI



Accused	Sentenced under Section(s)	Quantum of substantive Sentence	Quantum of fine	Sentence in default of payment of fine
A1 & A2	8(c) r/w 21(c) of NDPS Act	14 years RI	Rs.1,00,000/-	one year SI
A1 & A2	8(c) r/w 28 of NDPS Act	14 years RI	Rs.1,00,000/-	one year SI

2. The Trial Court has directed the sentences of imprisonment to run concurrently and also ordered set off under Section 428 of the Code of Criminal Procedure and both the accused, aggrieved by the conviction and sentences imposed by the Trial Court, vide Judgment dated 29.04.2014, had filed these Criminal Appeals.

3. These Criminal Appeals were listed on 18.03.2015 and the learned counsel appearing for the appellants, on instructions, would submit that he is not canvassing these Criminal Appeals on merits, but prayed for reduction of sentences of 14 years rigorous imprisonment to minimum sentence of ten years rigorous imprisonment and also prayed for reduction of term of default sentence.

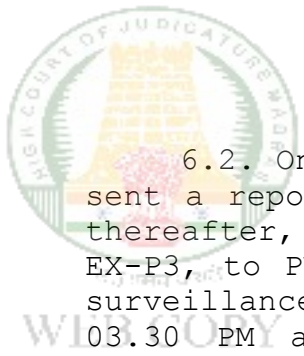
4. Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor for NCB Cases, prayed for adjournment to get instructions and hence, these Criminal Appeals were directed to be listed today under the caption "For Orders".

5. The learned Special Public Prosecutor for NCB Cases, on instructions, would submit that both the appellants/accused are under incarceration from 08.01.2006 onwards and they have completed the imprisonment for a period of nine years, two months and sixteen days and therefore, the plea of the learned counsel for the appellants/accused may be considered.

6. The facts, briefly narrated necessary for the disposal of these Criminal Appeals, are as follows:-

The appellants/Accused Nos.1 and 2, along with the absconding accused - Raja, Gulam Mohammed and Mubarak, had hatched a conspiracy between December 2005 and December 2006 at various places, viz., Sri Lanka, Tuticorin, Palayamkottai, Vallanadu and Veppalodai and accordingly, the first accused - Thangadurai had got 4.170 kilograms of Heroin, on 07.01.2006, through one of the absconding accused - Raja and possessed the same, without any right and with the help of the second accused - Maria Siluvai kept it near Tiruchendur Murugan Temple for the purpose of smuggling the same to Sri Lanka.

6.1.PW-1, Superintendent of NDPS, South Zone Unit, Chennai, on receipt of secret information from the informer with regard to the smuggling/transportation of the contraband, has reduced the same into writing - EX-P1 and after putting signature, forwarded the same to PW-2, Mr. M. Ramasamy, the Intelligence Officer of NCB, Tuticorin and it was reduced into writing by the said witness under Section 42 of the Act.



6.2. On 10.01.2006, PW-6, Mr.B.Ramamoorthy, the Intelligence Officer, sent a report under Section 57 of the Act, marked as EX-P4 to PW-1, and thereafter, PW-7, Mr.J.G.Sundar, the Intelligence Officer sent a report, EX-P3, to PW-1 under Section 57 of the Act. PW-2, Mr.M.Ramasamy, mounted surveillance, near Thiruchendur Murugan Temple on 07.01.2006, between 03.30 PM and 05.00 PM and at about 04.00 PM, saw a bike bearing Registration No.TN-69-6838 and when steps were taken to intercept the said vehicle, they avoided and in such process, the vehicle has fallen and they sustained lacerated injuries and thereafter, they had shown their identity cards and made enquiry with them and informed them of their right to be searched in the presence of a Judicial Magistrate or a Gazetted Officer and they stated that it is not necessary and the officials themselves can make a search and on search, the first accused took a white plastic sack and handed over the same to PW-2 and the contents of the same were weighed separately, totally weighing 4.170 kilograms of Heroin. After completing all the formalities, a detailed report was filed under Section 57 of the Act and submitted the same under EX-P8 and thereafter, the contraband and the vehicle were seized under the cover of mahazer. Both the accused were issued with the summons for their appearance and accordingly, they appeared before the Intelligence Officers concerned and voluntarily gave statements under Section 67 of the Act and consequently, they were arrested and remanded to judicial custody.

6.3. PW-7, after obtaining necessary permission, sent the contraband for chemical analysis and thereafter, one Mr.L.S.Aruldas, Intelligence Officer, Narcotics Control Bureau, was appointed to investigate the case and he filed a complaint under EX-P33 and the said complaint was taken on cognizance by the said Court and on appearance of the accused, charges were framed against them and both the accused pleaded not guilty to the charges framed against them.

6.4. The prosecution, in order to sustain their case, examined PW-1 to PW-9 and marked EX-P1 to EX-P37 and also marked MO-1 to MO-16.

6.5. The appellants/accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false. On behalf of the appellants/accused, no oral evidence was let in and no documents were marked.

6.6. The Trial Court, on consideration of the oral and documentary evidence, has convicted and imposed the sentences, as stated above.

6.7. Aggrieved by the conviction and sentence passed by the Trial Court, the appellants/accused have filed the present Criminal Appeals.

7. As already stated, the learned counsel for the appellants/accused, on instructions, made a plea that the sentences of imprisonment of 14 years awarded to both the accused for the commission of the above said offences may be reduced to the minimum sentence of 10 years and default sentence may also be reduced and made a submission that he is not canvassing these Criminal Appeals on merits.



8. The Court has heard the submissions of the learned Special Public Prosecutor for NCB Cases, who would submit that taking into consideration of the plea made by the learned counsel for the appellants/accused, appropriate orders may be passed.

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9. Section 23(c) of the Act says that where the contraband involves commercial quantity with rigorous imprisonment for a term, which shall not be less than ten years, but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees, but which may extend to two lakh rupees.

10. Section 28 of the Act speaks about the punishment for attempts to commit offence and the offence shall be punishable with the punishment provided for the offence.

11. Section 29 of the Act speaks about the punishment for abetment and criminal conspiracy and the accused shall be punishable with the punishment provided for the offence.

12. It is not in serious dispute that both the accused are under incarceration from 08.01.2006 onwards and they have completed nine years, two months and 16 days of imprisonment and they have not paid the fine amount also, as, according to the learned counsel for the appellants/accused, they are very poor and hence, they could not pay the fine amount.

13. This Court, taking into consideration of the facts and circumstances of the case and the plea made by the learned counsel for the appellants/accused and the submissions made by the learned Special Public Prosecutor for NCB Cases, is of the view that the conviction recorded by the Trial Court for the commission of the above said offences warrants no interference. But, the sentence of 14 years rigorous imprisonment each awarded by the Trial Court as well as the default sentences imposed by the Trial Court in the event of non-payment of fine, require reduction. This Court, in **Cr1.A.No.888 of 2004**, dated **08.06.2009**, has considered the plea with regard to the reduction of default sentences and reduced the same.

14. In the result, these Criminal Appeals are dismissed, confirming the conviction awarded by the Trial Court, vide Judgment dated 29.04.2014, made in C.C.No.479 of 2006. However, the sentence of imprisonment of 14 years each awarded by the Trial Court for the commission of offences, as stated above, is modified to one of 10 years each and the default sentence of one year simple imprisonment each, with regard to the imposition of fine of Rs.1,00,000/- each is reduced to three months simple imprisonment each. The sentences of imprisonment shall run concurrently. The period of incarceration already undergone by the appellants/accused during investigation and trial, is ordered to be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar(CO)



To

1.The District and Sessions Judge,
for Communal Clash Cases, Madurai.

2.The Intelligence Officer,
Narcotics Control Bureau,
South Zonal Unit, Chennai 600 090.

3.The Director General of Police, Mylapure, Chennai.

4.The Superintendent of Prison,
Central Prison, Madurai,

(With additional copies to Communicate the accused 1 & 2)

5.The Special Public Prosecutor for NCB,
Madurai Bench of Madras High Court,
Madurai.

6.The Section Officer,
Criminal Section, Madurai Bench of Madras High Court, Madurai.

+1cc to MR.C.ARUL VADIVEL @ SEKAR, SPECIAL PUBLIC PROSECUTOR FOR NCB
IN SR NO.14630

COMMON JUDGMENT MADE IN
CRL.A.(MD)Nos.186 and 187 of 2014
DATED - 25.03.2015

RG.08.04.2015 5P.10C.