

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :11.03.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**Criminal Appeal (MD)No.18 of 2015**

WEB COPY

Kannan

... Appellant/ Accused No.3

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
South Zone Unit,
Chennai-90.
(C.F.No.48/1/14/2004-NCB-MDS)

...

Respondent/Complainant

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in C.C.No.167 of 2005, dated 04.11.2013 by the Additional District & Sessions Court and Special Court for NDPS Act cases Pudukkottai.

For Appellant : Mr.G.Bhagavath Singh

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

JUDGMENT

The appellant is the third accused in C.C.No.167 of 2005 on the file of the Court of the Special Court for N.D.P.S Act Cases/Additional District & Sessions Court, Pudukottai and he stood charged and tried and convicted for the commission of offences under Sections 8(c) r/w 21(c), 28, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and was sentenced to undergo rigorous imprisonment for ten years each and fine of Rs.1,00,000/- each, with default sentence of one year rigorous imprisonment for each of the said offences and the trial Court further ordered the substantive sentences shall run concurrently vide judgment, dated 04.11.2013. The substantive sentences are ordered to run concurrently. The trial Court has also ordered set off under Section 428 Cr.P.C. Aggrieved against the conviction and sentence passed by the trial Court, the appellant/accused No.3, has filed this Criminal Appeal.

2. Mr.G.Bhagavath Singh, learned counsel appearing for the appellant would contend that the offences said to have been committed at about 13.45 hours on 01.08.2004 and the appellant was arrested on 21.10.2004 and he was not enlarged on bail and throughout the trial and as well as pendency of the appeal, he remained in judicial custody and would further add that he had already undergone substantive sentence of imprisonment and at present, he is undergoing default sentence on account of non-payment of fine imposed for the commission of offences stated

above



3. A perusal of the records also would disclose that the present appeal was filed with a delay of 372 days and it was condoned on 23.01.2015 and thereafter, the appeal was numbered and admitted on 28.01.2015. This Court taken into consideration the plea made by the learned counsel appearing for the appellant that the appellant/accused No.3 is in judicial custody right from 21.10.2004, has taken up this appeal for final disposal, though it is of the year 2015.

4. A perusal of the impugned judgment would disclose that the following facts:

(i) P.W.1 is the Intelligence Officer attached to the office of the Narcotics Control Bureau, South Zone Unit, Chennai and he received a telephonic information at about 7.00 p.m., on 31.07.2014 with regard to the smuggling/transportation of the contraband and reduced into writing and informed the same to his immediate Official Superior namely P.W.6 and submitted report to P.W.6 and the said report was marked as Ex.P.1.

(ii) On 01.08.2004, P.W.6 along with P.W.4 and independent witnesses namely Kalimuthu and Muniasamy, proceeded to Trichy - Ramanathapuram bus-stop and mounted surveillance at about 1.45 p.m., and noted the presence of A-1 and A-5 and disclose his identity and informed them that he would like to search them and the said accused were also informed their rights under Section 50 of the NDPS Act and the accused told him that it is not necessary and the Official themselves can conduct search. The cloth bags carried by A-1 and A-5 were searched and it contained six small packets and the contents of the same were weighed separately totally weighing 12.780 kgs of Narcotic/Psychotropic substance and the substance found to be psychotropic substance 'Heroin' and after drawing necessary samples and preparing mahazars, detailed report under Section 57 of the NDPS Act was submitted under Ex.P10.

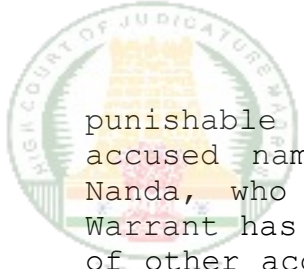
(iii) P.W.2, the Intelligence Officer from the directions of P.W.6 has issued summons to the Accused No.1 and he voluntarily appeared and give his statement under Section 67 of NDPS Act and so also to Accused No.2 and the statement given under Section 67 of NDPS Act were marked as Exs.P13 and P17 respectively.

(iv) P.W.3 has also interrogated the accused No.5 and recorded his statement under Ex.P20 and he has also submitted his report under Section 57 of NDPS Act and the same was marked as Ex.P22.

(v) P.W.5 on the arrest of Accused No.3 namely Kannan, the appellant herein has issued summons to him under Ex.P26 and asked him to appear before him and accordingly he voluntarily appeared and gave his statement under Section 67 of NDPS Act and the same was marked as Ex.P27 and subsequently, he was arrested under Ex.P.28.

(vi) P.W.6, who was entrusted with the contraband has took necessary steps to deposit the same.

(vii) P.W.10 after completion of the investigation, has filed the complaint, which was marked as Ex.P.53 charging nine accused for the commission of the offences under Sections 8(c) r/w Sections 21, 28 and 29



punishable under Sections 21(c), 28 and 29 of NDPS Act, 1985. The accused namely Balachndar, Balan @ Jayabalan, Saravanan @ Chetty and Nanda, who are all Srilankan National, had absconded and Non-bailable Warrant has been issued and cases against them were split up. In respect of other accused, the said complaint was taken on file by the trial Court in C.C.No.167 of 2005 and on appearance of the accused, copy of the police report and other documents have been served under Section 207 Cr.P.C and subsequently, the charges as stated above have been framed against them and they have pleaded not guilty to the charges. The respondent/complainant/prosecution in order to sustain their case, examined P.Ws.1 to 10 and marked Ex.P1 to P54 and M.Os.1 to 23

(viii) The appellant/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.

(ix) On behalf of the accused, no oral evidence was let in and no documents were marked.

(x) The trial Court on consideration of oral and documentary evidences, has convicted the sentenced the accused No.3/appellant as stated above and hence, this appeal.

5. The learned counsel appearing for the appellant/accused No.3 would contend that the appellant had already undergone the substantive sentence of imprisonment of 10 years rigorous imprisonment, which are ordered to run concurrently. Since he is not in a position to pay fine of Rs.1,00,000/- on each count of offence, he is undergoing the default sentence.

6. The learned counsel appearing for the appellant has drawn the attention of this Court to the judgment, dated 17.12.2014, made in CrI.A (MD)No.263 of 2014 filed by the accused No.2 namely K.Prabha and would submit that in similar circumstances, this Court has taken note of the judgment reported in **(2007) 11 SCC 243 (Shantilal v. State of M.P.)** and the judgment reported in **2013-2-L.W.(crl) 254 (Shahejadjkhan Mahabubkhan Pathan v. State of Gujarat)**, has modified the default sentence to one of two months rigorous imprisonment for each offence instead of one year rigorous imprisonment and similar benefit may also be conferred on the accused No.3 namely the appellant herein.

7. This Court heard the submissions of Mr.G.Bhagavath Singh and the learned Mr.C.Arul Vaivel @ Sekar, learned Special Public Prosecutor appearing for NCB Cases, who would submit that the accused No.2/appellant in CrI.A.No.263 of 2014, who was similarly placed was shown lenience by reducing the default sentence.

8. Admittedly, the appellant/accused No.3, had undergone the substantive sentence of imprisonment imposed on him with regard to the commission of above said offences and on account of his family circumstances and poverty, he is unable to pay fine of Rs.1,00,000/- imposed for the commission of said offences. This Court in respect of accused No.2 in the very same calendar case, who has filed CrI.A(MD) No.263 of 2014, has taken into consideration the judgments rendered by the Honourable Supreme Court of India(cited supra), reduced the default sentence to that of two months rigorous imprisonment for each offence.



9. It is represented by the learned counsel appearing for the appellant that the appellant/accused No.3 had already undergone 4 1/2 months of default sentence and in the light of the above said judgments, the default sentence imposed on him may be reduced to one month rigorous imprisonment each, so that the appellant may be come out of jail.

10. The appellant did not canvass the appeal on merits and only pleaded for reduction of default sentence of imprisonment and this Court had taken into consideration the said submission made on behalf of the appellant/accused No.3 and also the learned Special Public Prosecutor appearing for NCB Cases, is of the view that the appellant/accused No.3 is also conferred with the similar benefit as that of A-2 who is the appellant in CrI.A(MD)No.263 of 2014 on the principal of parity.

11. In the result, the Criminal Appeal is disposed of and the default sentence of one year Rigorous Imprisonment each imposed on the appellant/accused No.3 for the commission offences under Section 8(c) r/w 21(c), 28, 29 of N.D.P.S Act, is reduced to one month Rigorous Imprisonment each, which are ordered to be run consecutively. However, except the modification of the default sentence, the impugned judgment of conviction and sentence rendered in C.C.No.167 of 2005, dated 04.11.2013 by the Court of Additional District & Sessions Court and Special Court for NDPS Act cases Pudukkottai, is confirmed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

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To

1. The Additional District & Sessions Judge, and
Special Court for NDPS Act cases, Pudukkottai.
2. The Intelligence Officer,
Narcotics Control Bureau, South Zone Unit, Chennai-90
3. The Special Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Secretary to Government, Home Prohibition and Excise Department,
Fort St. George, Chennai-9
5. The Superintendent, Central Prison, Tiruchirappalli.
(In duplicate for Accused)
6. The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai-9
7. The Section Officer,
Criminal Section, Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.C. ARUL VADIVEL @ SEKAR, SPECIAL PUBLIC PROSECUTOR FOR NCB
CASES IN SR NO.11978

JUDGMENT MADE IN
CRIMINAL APPEAL(MD)No.18 of 2015
11.03.2015