



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2015

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THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Criminal Appeal(MD) Nos.338, 345, 383 of 2013 and 35 of 2014

Velladurai (A-1)
Velusamy (A-2) ... Appellants
in Crl.A.(MD)No.338 of 2013
Muthuramalingam (A-3) ... Appellant
in Crl.A.(MD)No.345 of 2013
Muthusamy (A-6) ... Appellant
in Crl.A.(MD)No.383 of 2013
Archunan (A-4) ... Appellant
in Crl.A.(MD)No.35 of 2014
Vs.
The State through the
Inspector of Police,
NIBCID, Theni District.
(Crime Nos.74 to 80 of 2004) ... Respondent in all Crl.As.

Appeals filed under Section 374 Cr.P.C., to call for the records, evaluate the evidence and set aside the order of conviction and sentence dated 12.11.2013 passed in C.C.No.590 of 2004 by the learned Additional District Judge/Principal Special Court for NDPS Act Cases, Madurai.

For Appellants : Mr.N.Ananthapadmanaban
(In Crl.A.(MD)No.338 of 2013)
For Appellant : Mr.K.Renganathan
(In Crl.A.(MD)No.345 of 2013)
For Appellant : Mr.U.M.Ravichandran
(In Crl.A.(MD)No.383 of 2013)
For Appellant : Mr.R.Ramasamy
(In Crl.A.(MD)No.35 of 2014)

For Respondent : Mr.T.Mohan,
(In all Crl.As) Additional Public Prosecutor.

COMMON JUDGMENT

Velladurai (A-1), Velusamy (A-2), Muthuramalingam (A-3), Archunan (A-4), and Muthusamy (A-6) in C.C.No.590 of 2004, who were convicted in the said case by the learned Additional District and Sessions Judge/Special Court for NDPS Act cases, Madurai for an offence punishable under Section 8(c) read with 20(b)(ii)(C) of NDPS Act, 1985 and sentenced to undergo Rigorous Imprisonment for ten years each and also to pay a fine of Rs.1,00,000/- each and to undergo one year Rigorous Imprisonment in case of default in payment of fine, are the appellants/accused in the present appeals preferred under Section 374 of the Code of Criminal Procedure, 1973.



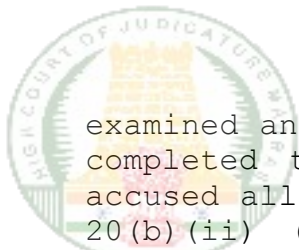
2. For the sake of convenience, the ranks of the parties referred to in this judgment shall be in accordance with their rankings before the trial court and at appropriate places for achieving more clarity the ranks of the appellants in the appeal shall also be referred to.

3. The prosecution story, in brief, can be stated as follows:-

(i) On 26.05.2004 at about 3.30 a.m when P.W.4-Annadurai was on duty as the Sub Inspector of Police in the Narcotic Intelligence Wing, Theni, he received an information from the informant (undisclosed), who came to the police station, that ganja was being transported at M.Subbulapuram diversion on the Madurai-Rajapalayam Road. P.W.4 recorded the said information as Ex.P.24 and got necessary permission from P.W.5-Ponram, the then Inspector of Police, proceeded with the police party to the place of occurrence and was watching for the suspicious movements of persons with narcotic drugs. The informant identified the accused to be the persons transporting ganja. P.W.4 introduced himself to the accused showing his identity card and informed them that he was going to search the accused and that the accused could have the search being conducted in the presence of the nearest Judicial Magistrate or a Government Gazetted Officer. The accused 1 to 6 and the deceased accused Palani replied that they did not want to be taken either to a Judicial Magistrate or to a Government Gazetted Officer for such search and on the other hand, the police themselves could conduct the search. They expressed their consent for such search under Ex.P.1. Pursuant to such consent, when the gunny bags in their possession were searched, it was found that each one of the bags contained 21 kgs of Ganja, a narcotic drug as defined under the Narcotic Drugs and Psychotropic Substances Act, 1985. P.W.4, took two samples weighing 50 gms drawn from each one of the seven bags for chemical analysis and sealed them in the presence of witnesses. The samples as well as the remaining ganja in the bags were sealed. The samples drawn from the contraband allegedly seized from the accused are M.Os.2,5,8,11,14,17 and 20. The remaining contraband was seized in a separate cover namely, M.Os.3,6,9,12,15,18 and 21 under Ex.P.2-seizure mahazar.

(ii) P.W.1-Nedunchelian, Head Constable, was part of the police party that conducted the raid and he attested Ex.P.1-consent letter for making search on the spot and Ex.P.2 mahazar for seizure of the contraband and for the drawal of the samples. Thereafter, the accused were arrested for possessing ganja, a narcotic drug for sale and the arrest memo prepared by P.W.4 for the said purpose is Ex.P.26. Along with the samples, the seized contraband and the arrested accused, P.W.4 returned to the police station, prepared Ex.P.27-First Information Report and registered a case in Crime Nos.74 to 80 of 2004 on the file of the NIBCID, Theni for an offence punishable under Sections 8 (c) read with 20 (b)(ii) (C) of the NDPS Act, 1985 and submitted the file to the Inspector of Police (P.W.5) along with Ex.P.28-report.

(iii) P.W.5-Ponram, the then Inspector of Police, took up the investigation, examined the witnesses, recorded their statements under Section 161 (3) Cr.P.C and submitted requisitions to the Court under Exs.P.3,6,9,12,15,18 and 21 to send the samples for chemical analysis. The samples were sent to the Assistant Director of Narcotic Wing, Regional Forensic Laboratory, Madurai along with the requisition letters-Exs.P.4,7,10,13,16,19 and 22. During the course of investigation P.W.5 received the copy of chemical analysis reports-Exs.P.5,8,11,14,17,20 and 23 sent to the Court from the Regional Forensic Laboratory, Madurai,



examined and recorded the statement of P.W.3-Meenakshi, Chemical Analyst, completed the investigation and submitted a final report against the accused alleging the commission of offence under Sections 8 (c) read with 20(b)(ii) (C) of the NDPS Act, 1985. The charges framed against one Palani stood abated as he died after framing of charges.

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4. After considering the records and after hearing the submissions made on behalf of the prosecution and also the accused, the learned trial Judge framed a charge for an offence under Sections 8 (c) read with 20(b)(ii) (C) of the NDPS Act, 1985 and recorded the plea of the accused 1 to 5 and 7, who claimed that they were not guilty of the offence. Consequently, a trial was conducted, in which five witnesses were examined as P.Ws.1 to 5 and 28 documents were marked as Exs.P.1 to 28 besides producing M.Os.1 to 21 on the side of the prosecution, in order to prove the charge against the accused. On completion of the evidence adduced on the side of the prosecution, the accused were given an opportunity to explain the incriminating materials found in the evidence adduced on the side of the prosecution by recording their statements under Section 313(1)(b) of Cr.P.C. They denied the evidence adduced on the side of the prosecution as false and contended that they were innocent. No defence witness was examined and no document was produced on the side of the accused.

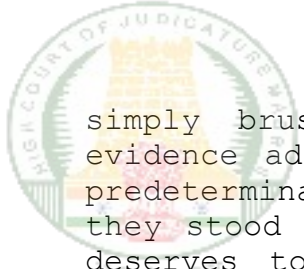
5. The learned trial Judge, after hearing the arguments advanced on both sides, considered the evidence and upon such consideration, pronounced a judgment holding the accused guilty of the offence under Sections 8 (c) read with 20(b)(ii) (C) of the NDPS Act, 1985 for which they were prosecuted and sentenced them to undergo punishment as indicated *supra*. The said judgment of the trial Court is challenged by the appellants/accused 1 to 4 and 6 on various grounds set out in the appeal memoranda.

6. The point that arises for consideration in these appeals are as follows:-

"Whether the judgment of the trial Court convicting and sentencing the appellants/accused 1 to 4 and 6 for the offence punishable under Sections 8 (c) read with 20(b)(ii) (C) of the NDPS Act, 1985 suffers from any defect or infirmity requiring interference by this Court in respect of conviction or in respect of punishment?"

7. The arguments advanced by Mr.N.Ananthapadmanaban, learned counsel appearing for the appellants in CrI.A.(MD) No.338 of 2013, Mr.K.Renganathan, learned counsel appearing for the appellant in CrI.A.(MD) No.345 of 2013, Mr.U.M.Ravichandran, learned counsel appearing for the appellant in CrI.A.(MD) No.383 of 2013, Mr.R.Ramasamy, learned counsel appearing for the appellant in CrI.A.(MD) No.35 of 2014 and Mr.T.Mohan, learned Additional Public Prosecutor for the respondent were heard. The judgment of the trial Court and the materials available on record sent for from the Court below were also perused.

8. Learned counsel for the appellants (A1 to 4 and 6) advanced similar arguments and according to their contentions, the case against the appellants was a cooked up one and the same would be revealed by the material contradictions found in the evidence adduced on the side of the prosecution. It is also their contention that the prosecution miserably failed to prove its case beyond reasonable doubt; that the trial Court



simply brushed aside the contradictions and improbabilities of the evidence adduced on the side of the prosecution and proceeded with the predetermination that the accused were guilty of the offences with which they stood charged and that the same resulted in their conviction which deserves to be set aside by this Court in exercise of its power of appeal.

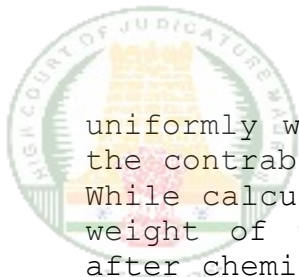
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9. Per contra, learned Additional Public Prosecutor appearing for the respondent police would contend that the contradictions and omissions pointed out on the side of the appellants are only trivial and insignificant and that in all material particulars, the witnesses examined on the side of the prosecution corroborated each other and their reliability remained unshaken. It is the further submission made by the learned Additional Public Prosecutor that on a proper appreciation of evidence, the trial Court came to a correct conclusion that the appellants were guilty of the offence for which they faced trial and that the present attempt on the part of the appellants is to find loopholes, pointing out trivial discrepancies and try to escape the penal consequences of their acts.

10. This Court carefully considered the above said submissions made on both sides.

11. According to the prosecution story, the police party, at NIBCID, Theni conducted a search at the place of occurrence pursuant to the secret information furnished by the informant who appeared in person in the police station before P.W.4-Annadurai, the then Sub Inspector of Police. It was the very same informant who took the police party to the place of occurrence and identified the accused persons, who were carrying loads of ganja. The said informant, who not only furnished the information but also identified the accused persons while carrying loads of ganja, was not examined as a witness on the side of the prosecution. The other part of the episode namely, the search made in the place of occurrence by the police party, seizure effected, drawal of samples and arrest of accused have been spoken to by P.W.1-Nedunchezhilian, Head Constable and P.W.4-Annadurai, the then Sub Inspector of Police alone. No other person in the police party that conducted raid was examined as witness. P.W.4-Annadurai, the then Sub Inspector of Police, who headed the police party for conducting the raid did depose to the effect that on receipt of the information from the informant at the police station, he recorded the same and got permission from the Inspector of Police to proceed with the police party to the place of occurrence. But the Inspector of Police, who was examined as P.W.5, did not support the said version of P.W.4-Annadurai.

12. The case of the prosecution, as deposed by P.W.1 and P.W.4, is that each one of the accused was carrying a gunny bag containing 21 kgs of ganja and two samples weighing 50 gms each were drawn from each one of the bags and sealed. One such sample drawn for each one of the gunny bags was sent to the Regional Forensic Lab, Madurai. The evidence of P.W.2, Chemical Analyst is to the effect that the samples received for analysis weighed 54 gms, 45 gms, 53 gms, 57 gms, 55 gms, 53 gms and 53 gms respectively. As rightly pointed out by the learned counsel for the appellants, there is no explanation for the variation in the weight of the samples. It is the case of the prosecution that all the seven bags



uniformly weighed 21 kgs without any variation. After drawal of sample, the contraband left in each one of the bags should be 20 kgs and 900 gms. While calculating the weight of the contraband, P.W.4, did not deduct the weight of the container namely, the gunny bag. The samples returned after chemical examination have been produced as M.Os.1,4,7,10,13, 16 and 17.

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13. In the light of the above said facts, let us consider the submissions made on both sides as to whether the trial Court was right in holding that the charge against the accused persons were proved beyond reasonable doubt and convicting them for the offence for which they were prosecuted. The arguments advanced on behalf of the appellants in all the criminal appeals are almost one and the same.

14. The sum and substance of the arguments advanced on behalf of the appellants are as follows:-

The case against the accused was cooked up and concocted by the police, who would have seized the contraband at some other place and under some other circumstances, implicating the appellants and two other as the accused persons, perhaps due to the reason that the real offenders would not have been found out or could have escaped from the place wherein the contraband came to be seized. The material contradictions found in the evidence adduced on the side of the prosecution point to the improbabilities of the prosecution version, leave alone the failure of the prosecution to prove its case beyond reasonable doubt. Absence of independent witness to support the case of the prosecution, material contradictions between the testimonies of P.W.1, P.W.4 and P.W.5 (all Police officials), the failure to examine the other members of the police party who participated in the raid and absence of any independent witness were not properly appreciated by the trial Court. Had the trial Court appreciated the same in proper perspective, it would have arrived at a conclusion that the prosecution failed to prove the charges against the appellants/accused beyond reasonable doubt and would have acquitted the appellants/accused.

15. The dramatic way in which the case came to be registered alleging that all the 7 accused were found carrying gunny bags containing exactly 21 kgs of ganja, gives rise to a serious and reasonable suspicion regarding the prosecution version relating to the arrest of the accused and seizure of the contraband from them. Even though a single FIR was registered and 7 crime numbers were assigned as Crime Nos.74 to 80 of 2004, the FIR does not make it clear as to which Crime Number relates to which accused. The respondent police registered cases against 7 persons in Crime Nos.74 to 80 of 2004 alleging that each one was found possessing 21 kgms of ganja, a narcotic drug, without proper licence and were transporting the same and thus they had committed the offence punishable under 8(c) read with 20(b)(ii)(C) of NDPS Act, 1985. Though for 7 Crime Numbers a single FIR came to be prepared, a common final report came to be filed after investigation. The learned trial Judge took cognisance of the case in a single calendar case in C.C.No.590 of 2004. Since one of the 7 persons arrayed as 6th accused namely, Palani died before the filing of the charge sheet, charge as against him stood abated and the cases as against the remaining six alone were proceeded with in C.C.No.590 of 2004. All the six persons were found guilty, convicted and sentenced as indicated in the earlier part of the judgment. Out of the six persons,



Nagaraj arrayed as A-5 C.C.No.590 of 2004 has not chosen to file an appeal. It is also highly improbable that each gunny bag containing contraband weighed exactly 21 kgs and it cannot be believed that it would be an accidental coincidence.

16. Of course, it was asserted by P.Ws.1 and 4 that two samples each weighing 50 gms were drawn from each one of the bags seized from the accused persons, retaining one set of samples, the other set of samples was sent to Regional Forensic Laboratory, Madurai. It is surprising to find that the samples received in the Regional Forensic Laboratory were of different weights. There is vast variation of the quantity found in the sample pockets sent to the Regional Forensic Laboratory. As such, the quantity of ganja found in each gunny bag as noted by the police official who seized it could not be correct and this aspect was not adverted to by the trial Court, in arriving at a conclusion that each one of the appellants/accused was having in his possession of 21 kgs of ganja, a little more than the commercial quantity. The failure to consider the said discrepancy resulted in the trial Court rendering a finding that the prosecution proved that the contraband found in each one of the bags was a commercial quantity.

17. In the matter of recording the information based on which P.W.4-Annadurai, the then Sub Inspector of Police and his police party went to the place of occurrence to capture the accused and seize the contraband, the requirements of Section 42 of Narcotic Drugs and Psychotropic Substances Act, 1985 were not complied with and the same was not properly considered by the Court below. If the evidence, both oral and documentary, adduced on the side of the prosecution was properly evaluated, the trial Court would have found out the improbabilities of the prosecution version or at least the presence of reasonable suspicion in the prosecution story and found that the defence version of the appellants/accused was probable. The trial Court failed to consider the cardinal principle of criminal jurisprudence that the burden of proof cast on the prosecution is to prove the charge beyond reasonable doubt and that in case, the burden is shifted on the accused to prove their innocence, it shall be enough for the accused to prove it by preponderance of probabilities rather than proof beyond reasonable doubt.

18. The prosecution case can be desected into four parts:-

"(i)The receipt of information from the informant, formalities adopted for recording the information by the P.W.4, the then Sub Inspector of Police, obtaining permission from his higher official and proceeding towards the place of occurrence with the police party.

ii)The identification of the accused persons carrying gunny bags containing the contraband ganja, interception made by the police party, search conducted by the police at the place of occurrence, seizure of the contraband, drawal of samples and arrest of the accused persons.

iii)On return to the police station with the seized contraband and the samples drawn from them along with the arrested accused persons, remand of the accused persons, preparation of FIR and registration of cases and sending the accused persons with remand reports for remand.



(iv) The investigation of the case, during which chemical analyst report was obtained from the Regional Forensic Laboratory, completion of the investigation and submission of the final report".

19. So far as the first phase of the prosecution case is concerned, the testimonies of P.W.1-Head Constable and P.W.4, the then Sub Inspector of Police alone are available. In addition the alleged information furnished by the informant and reduced to writing by P.W.4, the then Sub Inspector of Police, was marked on the side of the prosecution as Ex.P.24. The said information, which could have been the earliest document that came into existence, was not sent to the higher official by P.W.4 and it does not contain any endorsement or signature of P.W.5, the then Inspector of Police to evidence having received the information recorded under Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The information is to the effect that the informant went to the office of the NIB CID at odd hours, namely 3.30 a.m on 26.05.2004 and informed P.W.4 that 7 persons known to him were taking ganja for sale at M.Subbalapuram diversion on the Madurai - Rajapalayam Main Road and that he would identify them. Though the said information was said to have been furnished by the informant, who came to the office of the NIB CID at odd hours, the particulars of the informant are not found. The non-furnishing of the particulars of the person giving the secret information may not be significant, but the same has been referred to in support of the observation appearing below in respect of the arrest and seizure. It is not the case of the prosecution that the informant was a person not known to the accused. It is also not the case of the prosecution that on receipt of information, the police party alone or police party with some other witnesses alone proceeded towards the place of occurrence. On the other hand, the prosecution case proceeds on the line that the informant also accompanied the police party and it was the informant who identified the accused persons found with gunny bags containing the contraband and that pursuant to the same they were stopped and the contents of the gunny bags were checked. It is also not the case of the prosecution that the informant was asked to be at a place so that the accused could not see and identify him. When the informant himself came in the lime light and identified the accused, the prosecution cannot withhold the identity of the informant to the Court trying the case.

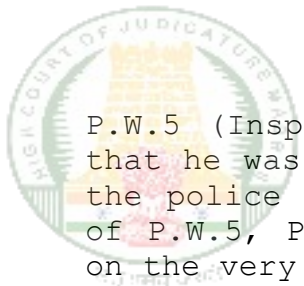
20. It is also pertinent to note that P.W.4, who conducted the raid with his party, did not take effective steps to get an independent witness for the arrest of the accused and seizure of the contraband. It is the evidence of P.W.1 (Head Constable) that on their way to the place of occurrence, they stopped at Peraiyur bus stop and asked two persons standing there namely, Mani and Raja to accompany them to be witnesses at the place of occurrence, but they declined stating that they had urgent work to attend. Though P.W.4 (Sub Inspector of Police) seems to have corroborated the evidence of P.W.1 (Head Constable) in this regard, there is nothing to show that they made any attempt to take any other person along with them to be a witness for the search, arrest and seizure. It is also evident from their admission that P.W.4 (Sub Inspector of Police) did not issue summons to those persons in writing and obtained their answers in writing. A consideration of the same will make it clear that they did not make sincere attempt to find out an independent witness to be present at the time of search, arrest and seizure.



21. Furthermore, though P.Ws.1 (Head Constable) and 4 (Sub Inspector of Police) spoke about the information furnished by the informant and P.W.1 (Head Constable) made an attempt in his chief examination that the informant furnished information about the accused and the said information was recorded by P.W.4, he did not give the time at which the said informant came to the NIB CID Office and gave information and the time at which information was recorded by P.W.4 (Sub Inspector of Police). However, during cross examination, he (PW1) made a clear admission that he had no knowledge about the said information furnished by the informant. Again P.W.1 (Head Constable) gave a contrary version to the effect that he was in the police station when the informant came to the NIB CID. It is also his evidence that when the informant gave the information in the police station, he along with one Subbramani (Head Constable) and the Sub Inspector of Police were present. The said Head Constable who also went to the place of occurrence along with P.Ws.1 and 4 was not examined as a witness before the trial Court.

22. Though P.W.4 (Sub Inspector of Police) could have stated that after recording the information, he informed his higher official and got his orders to proceed to the place of occurrence, he has not stated in the chief examination the name or rank of the higher official from whom he got such permission. In Ex.P.24 also, as pointed out supra, there is no endorsement or signature of any of the higher official of P.W.4 (Sub Inspector of Police), to show that the said information was sent to such higher official and his order was obtained.

23. P.W.5-Ponram, the then Inspector of Police, made it clear that before he took up the case for investigation after the registration of the case, he did not receive any intimation from P.W.4 (Sub Inspector of Police). There is a clear admission of P.W.5 that he was not present in the police station at the time when the information was received from the informant by P.W.4; that there is no endorsement made by him in the said information recorded by P.W.4 to the effect that he (P.W.5) received information and that though Ex.P.24 contains a note made by P.W.4 to the effect "The received above information and informed the superiors", who was that superior was not found mentioned. It is also his clear evidence that he did not form part of the police party which went to the place of occurrence and he was not available in the police station when the police party came back to the police station along with the accused persons and the contraband. It is also pertinent to note that no observation mahazar and no rough sketch showing the place of occurrence came to be produced by the prosecution. P.W.5 (Inspector of Police) clearly admitted that he did not go to the place of occurrence and prepare any rough sketch showing topography of the place of the occurrence. It is a clear admission made by P.W.5 that he did not go to the place of occurrence either along with the party which conducted the raid or during the course of investigation. But P.Ws.1 and 4 in their evidence have chosen to state that the Inspector of Police also accompanied them. P.W.4 (Sub Inspector of Police) also stated in his evidence that the raid was conducted under the direct supervision of the Inspector of Police. The further evidence of P.W.4 (Sub Inspector of Police) is that when they came back to the police station along with the contraband and the accused persons, the Inspector of Police was there and P.W.4 (Sub Inspector of Police) submitted his detailed report to the Inspector of Police, whereas

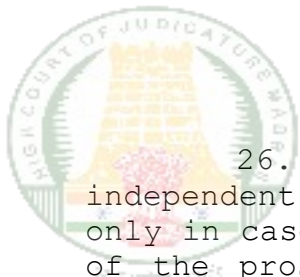


P.W.5 (Inspector of Police) gave a contradictory version to the effect that he was not in the police station when the police party came back to the police station along with the accused. As against the said evidence of P.W.5, P.W.4 would state that he was examined by Inspector of Police on the very same day.

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24. In Ex.P.1, the consent letter for conducting search at the place of occurrence itself, Ex.P.2 - Mahazar for seizure and drawal of samples, Ex.P.25 - search mahazar prepared at the time of arrest of the accused, Ex.P.26 - arrest report, the signature of P.W.4 (Sub Inspector of Police) alone is found. There is not even a mention in those documents that those documents were prepared in the presence of the Inspector of Police and that the raid itself was conducted under the supervision of the Inspector of Police. However, in the First Information Report, prepared at 12.00 noon on 26.05.2004, it has been stated that the police party went to the place occurrence and conducted the raid under the direct supervision of the Inspector of Police. The said recital is found in Ex.P.27, FIR and Ex.P.28, the detailed report alone. P.W.5, (Inspector of Police) was categorical in his statement that he did not go to the place of occurrence and the raid was not conducted under his direct supervision. It is the evidence of P.W.1(Head Constable) that the arrest was made at 9.30 hours on 26.05.2004 by the Inspector of Police. But in Ex.P.25 - search mahazar, Ex.P.26 - arrest report, signature of the Inspector of police is not found and they contain only the signature of P.W.4(Sub Inspector of Police). The signature of one Veludurai of Bodi is found in Ex.P.26 as the relative of the arrested persons to whom the intimation regarding the arrest was given. But how the intimation was given, is not noted in the said arrest intimation.

25. Furthermore, as rightly contended by the learned counsel appearing for the appellants/accused, P.W.5 (Inspector of Police) who is said to have conducted the investigation and submitted a final report, seems to have simply signed the papers without conducting any kind of investigation. Apart from contradictions indicated above, there is a clear admission made by P.W.5 (Inspector of Police) that he did not prepare any observation mahazar or rough sketch showing the place of occurrence and he did not examine any witnesses in the place of occurrence. The same gives rise to a serious suspicion as to whether P.W.5 (Inspector of Police) would have conducted an impartial investigation. The only witnesses examined on the side of the prosecution to prove the occurrence are P.Ws.1 and 4. P.W.1 was the Head Constable and P.W.4 was the Sub Inspector of Police and both of them were shown to be the members of the police party which conducted the raid, seized the contraband and arrested the accused. Their evidence cannot instil the confidence of the Court without giving room for any reasonable suspicion. Both of them stated in their evidence that P.W.5(Inspector of Police) came to the place along with them and the raid, seizure and arrest were made under the supervision of the Inspector of Police. The said parts of the testimonies of P.Ws.1 and 4 stands falsified by the evidence of P.W.5 (Inspector of Police) who was categorical in his testimony that he did not form part of the police party which conducted the raid and that the raid was not conducted under his supervision. In fact, it is his clear evidence that either at the time of alleged occurrence or during the course of investigation, he did not go to the place of occurrence to conduct investigation.

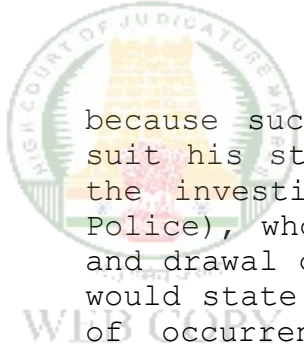


26. Though the evidence of police officials in the absence of independent witness can be made the basis of a conviction, it can be done only in cases where they do not admit a reasonable suspicion in the story of the prosecution and the Court believes the version of such police officials. In the case on hand, it is hard to believe the evidence of P.Ws.1 and 4. First of all PW1 ventures to state in his chief examination that he was aware of the information furnished by the informant in the police station, recording of the same by the Sub Inspector of Police, passing on the information to the higher official and obtaining orders for proceeding towards the place of occurrence for conducting raid. It was also his evidence in the chief examination that on receipt of orders, he along with Head Constable, Sub Inspector of Police and the Inspector of Police, took necessary apparatus and proceeded towards the place of occurrence which was about 80 kms away from the police station. However, during the course of cross examination, he admitted that when the Sub Inspector of Police received the information, the Inspector of Police was not in the police station. It is also his admission that he did not have any personal knowledge about the information furnished by the informant.

27. Of course, the samples allegedly drawn from the contraband seized from the accused persons, on examination in the Regional Forensic Lab were found to be ganja, a narcotic drug. P.W.2 (Chemical Analyst) spoke about the receipt of one set of samples, chemical examination of the same and finding out the contents to be ganja. Along with the report, unspent amount of contraband in the sample pockets were sent back to the court. The mahazar prepared by P.W.4 (Sub Inspector of Police) for seizure and drawal of sample has been marked as Ex.P.2.

28. A careful scrutiny of the above said documents, in the light of the evidence adduced by the prosecution witnesses, will make it clear that PW4 drew two samples from each weighing 50 grams from each bag and one set of samples were sent to Regional Forensic Laboratory for chemical examination. But the samples sent to the Forensic Laboratory were not of the same weight. As the weight of the sample pockets vary, the weight of the contraband found in the gunny bags, could not have been correctly measured. Though the same look like a trivial variation, such trivial variation coupled with other contradictions and improbabilities, may add to the suspicion regarding the prosecution version. If all the above said aspects had been taken into consideration by the learned trial Judge, the learned trial Judge would have arrived at a conclusion that the charges against the appellants herein/accused were not proved beyond reasonable doubt; that there were serious and reasonable doubts regarding the prosecution version and the trial court would have acquitted the appellants/accused, at least giving the benefit of doubt.

29. Though it is not desirable to show leniency in cases of sale, possession or transport of narcotic drugs of commercial quantity, it must be kept in mind that when the punishment is severe, strict proof shall be required and caution shall be exercised when no independent witness is examined and the prosecution case relies solely on the official witnesses. Even among the official witnesses, the person who conducts raid, effects arrest of the accused and seizes the contraband cannot be the Investigating Officer, as it will impede the unbiased investigation,

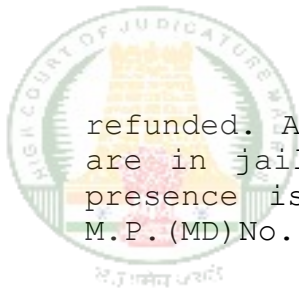


because such an officer will be inclined to prepare the statements to suit his story of the occurrence. That is the reason why in this case, the investigation was said to have been done by P.W.5 (Inspector of Police), who did nothing in the arrest of accused, seizure of contraband and drawal of samples. However, two of the witnesses namely, P.Ws.1 and 4 would state that P.W.5 (Inspector of Police) was also present in the scene of occurrence and the entire episode took place under the direct supervision of the Inspector of Police. Either the Inspector of Police should have been a part of the police party which conducted the raid and in order to show that no part was played by him in respect of the arrest, seizure and drawal of samples, he should have denied having gone to the place of occurrence or the evidence of P.Ws.2 and 4 regarding the presence of P.W.5 and the place of occurrence should be false. In either case, it is crystal clear that P.W.5 did not conduct proper investigation and he simply prepared the papers and the charge sheet sitting in his office and doing only a table work. The above said view will gain strength from the remand report, Ex.P.26 sent to the court by P.W.4 (Sub Inspector of Police). In the said remand report, P.W.4 (Sub Inspector of Police) had stated that the investigation of the case was taken up by himself. Even for preparing FIR marked as Ex.P.27, the police have chosen to use an old form of FIR which does not contain serial numbers of form. Name of the Ponram-P.W.5, the Inspector of Police is noted in the FIR as the officer who would conduct the investigation. The remand reports were prepared by the Inspector of Police and they were prepared by P.W.4, the Sub Inspector of Police. It was stated therein that P.W.4, the Sub Inspector of Police himself had taken up the case for investigation.

30. All the above said aspects, as rightly pointed out by the learned counsel appearing for the appellants, would show that there are serious and reasonable doubts regarding the prosecution story and on the other hand, either because the police were not in a position to find out and arrest the real culprits or because they wanted to protect the real accused, the case would have been foisted against the appellants and the other co-accused. A proper appreciation of evidence would have led to the acquittal of the accused persons holding that the charges against them had not been proved beyond reasonable doubt.

31. This Court, on re-appreciation of evidence, comes to the conclusion that the charges against the appellants had not been proved by the prosecution beyond reasonable doubt and that the trial Court's judgment finding them guilty of the offences under Section 8(c) read with 20(b)(ii)(C) of NDPS Act, 1985 and sentencing them for the said offence is wrong, infirm and discrepant. This Court does have no hesitation to come to the conclusion that the conviction of the appellants herein/accused recorded by the trial Court is infirm and discrepant and hence, liable to be set aside, with the result that the appellants should be acquitted on the basis that the prosecution has not proved the charges against the appellants beyond reasonable doubt.

32. In the result, the Criminal Appeals are allowed. The judgment of the learned Additional District Judge/Principal Special Court for NDPS Act Cases, Madurai, dated 12.11.2013 convicting the appellants/accused 1, 2, 3, 6 and 4, in C.C.No.590 of 2004 is set aside. The appellants/accused 1, 2, 3, 6 and 4 are acquitted of the offence with which they stood charged. The fine amount, if any, paid by them shall be



refunded. As it is reported that the appellants/accused 1, 2,3, 6 and 4 are in jail, they are directed to be released forth with unless their presence is required in connection with any other case. Consequently, M.P.(MD)No.1 of 2014 is closed.

WEB COPY

/True copy/

Sd/-
Assistant Registrar (Writs)

Sub Assistant Registrar

To

- 1.THE ADDITIONAL DISTRICT JUDGE/
PRINCIPAL SPECIAL COURT FOR NDPS ACT CASES, MADURAI.
2. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MADURAI.
- 3.THE SUPERINTENDENT OF PRISONS,
CENTRAL PRISON, MADURAI.
(WITH COPIES FOR COMMUNICATE TO THE ACCUSED)
4. THE INSPECTOR OF POLICE, NIB CID, THENI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to MR.R.RAMASAMY, ADVOCATE IN SR : 24957
+1cc to MR.K.RANGANATHAN, ADVOCATE IN SR : 24146
+1cc to MR.N.ANANTHA PADMANABHAN, ADVOCATE IN SR : 24282

Sms

SR : 08.05.2015 : 12p/11c

judgment in
Criminal Appeal(MD) No.338, 345,
383 of 2013 and 35 of 2014
30.04.2015