

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
Crl.O.P.No.9609 of 2016

The Superintendent of Customs
Air Cargo Complex
New Customs House, Meenambakkam
Chennai - 600 027.

...Petitioner

Vs.

1. S.Manikandaraman
2. R.Pothiraj
3. R.Kannan
4. V.Sethuraman
5. F.Arokiya Dass

...Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 22.02.2016 in M.P.No. 2938 of 2015 in R.R.No. 9 of 2015 on the file of the learned Judge, Principal Special Court for NDPS Act Cases, Chennai and send the third sample S3 or sample taken from the bulk to Central Drug Testing Laboratory, Periamet, Chennai -3 or any other lab for chemical analysis test.

For Petitioner Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 22.02.2016 passed in M.P.No. 2938 of 2015 in R.R.No. 9 of 2015 on the file of the Court of the Principal Special Judge for NDPS Act Cases, Chennai and send the third sample (S3) or sample taken from the bulk to Central Drug Testing Laboratory, Periamet, Chennai - 3.

2. On 16.06.2015, the Superintendent of Customs and his team of officers checked a consignment intended for export to Malaysia at the Air Cargo Complex and found a bag containing white coloured crystalline substance kept concealed within cotton P/L sarees. The substance was tested with the help of drug testing kit available with the Customs Department and it answered the test for "Amphetamine", a psychotropic substance, prohibited under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "the Act"). The contraband was seized and

three samples, viz. S1, S2 and S3, each weighing 25 gms., were drawn in the presence of independent witnesses under a cover of mahazar. During the course of investigation, five persons were arrested for offences under Section 22, 23 and 29 of the Act and Section 135 of the Customs Act.

3 S1, S2 and S3 samples were sent to the Special Court for NDPS Act Cases with a requisition to send S1 sample to the Customs House Laboratory, Chennai for chemical analysis. S1 sample was analysed by the Assistant Chemical Examiner, Customs House Laboratory, Chennai and the report submitted by the Customs House Laboratory is as follows:

" Report: Lab No.784, dt. 22.06.2015 (marked as S1)

The sample is in the form of white crystalline powder. It does not answer the tests for the presence of Amphetamine.

Wt. of sample received along
with plastic pouch = 25.7 gms.

Wt. of unexpended (remnant)
sample returned along with
plastic pouch = 15.4 gms.

Note: The quantitative analysis of the sample could not be carried out for want of facilities."

4 Not satisfied with the test report, the Customs Department filed a second application before the Special Court for NDPS Act Cases for referring S2 sample for analysis by the Central Forensic Science Laboratory, Hyderabad. The Court sent S2 sample to the Central Forensic Science Laboratory, Hyderabad and the report dated 04.11.2015 received from the said laboratory is as follows:

" The exhibit was analyzed by Colour Tests, UV-Vis Spectrophotometry and GC - MS Methods. Based on the above methods the result thus obtained is given below:

Amphetamine has not been detected in the content of Exhibit S2. However, Sodium Chloride (NaCl) has been detected in the content of Exhibit S2.

13. After the examination the parcel containing the exhibit/remnant having weight of 19.86 grams with polythene cover in Exhibit S2 has been sealed with the seal impression."

5 These two laboratories have analysed the samples and found that they do not contain Amphetamine. Notwithstanding that, the Department filed a petition before the Special Court for NDPS Act cases for referring S3 sample to the Director, Central Drug Testing Laboratory, Naval Hospital Road, Periamet, Chennai - 3 for chemical analysis, which request was denied by the Trial Court by order dated 22.02.2016, challenging which, the Customs Department is before this Court.

6 Heard Mr. N.P.Kumar, learned Special Public Prosecutor appearing for the petitioner/department and perused the records.

7 It is seen that the Customs House Laboratory, Chennai and the Central Forensic Science Laboratory, Hyderabad are notified under Section 293, Cr.P.C. and they are institutions of repute. Both the institutions have analysed the samples sent by the Court and have opined that the substance is not "Amphetamine".

8 Under such circumstances, the Customs Department cannot be permitted to repudiate the test reports just because they are not favourable to the prosecution case. Under Article 21 of the Constitution of India, the accused are also entitled to a fair process of investigation and trial. That apart, this Court does not find any serious infirmity in the order passed by the Court below.

Hence, this Criminal Original Petition is dismissed as devoid of merits. However, it is open to the petitioner/Department to prosecute the accused under the provisions of the Customs Act, if so advised.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

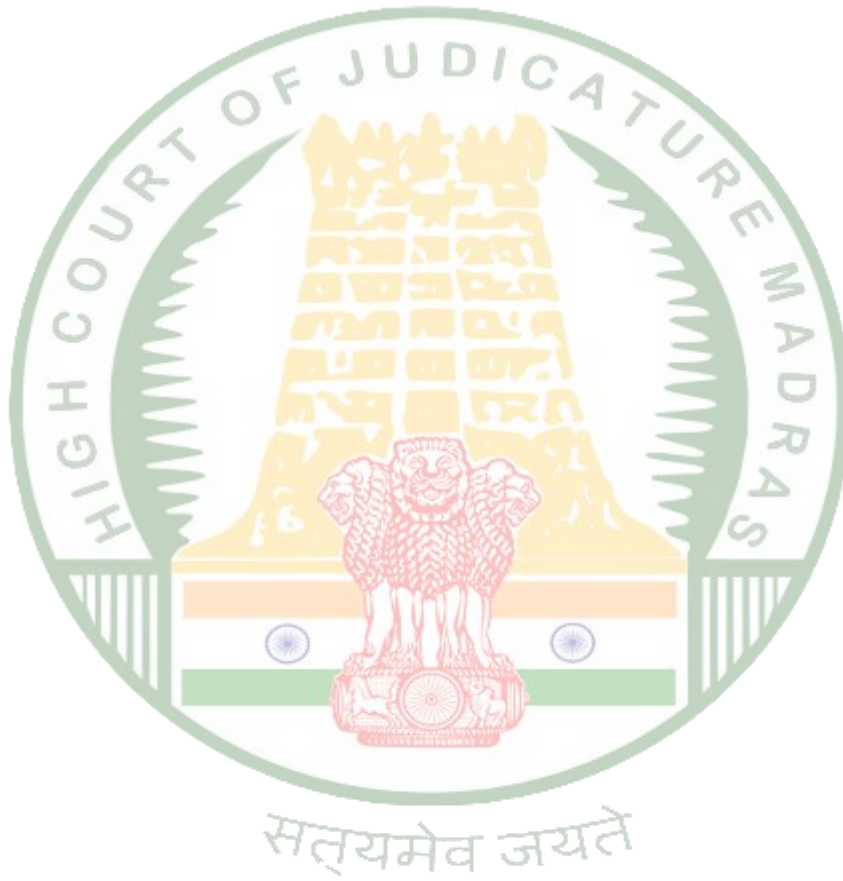
To

1. The Principal Special Judge for NDPS Act Cases, Chennai.

2. The Additional Public Prosecutor,
High Court,
Madras.

Crl.O.P.No.9609 of 2016

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srg 28/06/2016



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