

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.90 OF 2007

JUDGMENT:

This Criminal Appeal is filed by the appellants/A-1 to A-6 by invoking the provision under Section 374(2) of the Criminal Procedure Code (for short 'Cr.P.C.'), against the judgment, dated 19.01.2007, rendered in NDPS SC No.30 of 2005, by the Special Sessions Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (I Additional Sessions Judge's Court), East Godavari at Rajahmundry, whereby and whereunder the learned Sessions Judge found the appellants/A-1 to A-6 guilty of the offence punishable under Section 8(c) read with Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and convicted and sentenced them to undergo Rigorous Imprisonment for a period of ten (10) years each and to pay a fine of Rs.1,00,000/- each, in default to undergo Simple Imprisonment for a period of two (2) years each.

2. The case of the prosecution in brief is that on 19.02.2004 at about 12 noon, the S.H.O., Prohibition & Excise Station, Rajahmundry (P.W.3) along with K. Venkateswara Rao, V.A.O., Subbaraonagar, Rajahgmundry (P.W.1) and Sri Ch.V.V.Satyanarayana, Senior Assistant, Irrigation Department, Rajahmudnry and his staff under the supervision of Sri P. Vasudevarao, Sub-Divisional Prohibition and Excise Officer, Rajahmundry, on information, when they conducted route watch, at Lalacheruvu Centre to Subbaraonagar Quarry Road, Rajahmudnry, they noticed Contessa Car bearing No.MH 01 P 3905 coming from Lalacheruvu Road towards Subbaraonagar and

on suspicion, the said Excise Party stopped the car and questioned identity of the six persons in the car, they have revealed their identity as A-1 to A-6 herein and A-1 stated that he is the driver of the car and A-1 to A-6 admitted ganja is in the car dickey. When the dickey of the car was searched in the presence of the said mediators, they have noticed 18 packets of ganja (M.Os.19 to 36) weighing 173 kgs. The P.W.3 lifted sample of 200 grams each from 18 packets (M.Os.1 to 18). During the search of the car, the Excise Party also recovered C-Book of the car, Insurance Policy and Xerox copy of drafts for Rs.40,000/- and Rs.12,000/- in the dashboard of the car. They were also seized by P.W.3. Under the cover of Ex.P-1, P.W.3 seized M.Os.19 to 36 ganja packets and sample packets M.Os.1 to 18 and M.O.37 C-Book and Contessa Car M.O.56. On further enquiry, A-1 confessed availability of another nine packets of ganja in the house bearing D.No.67-24-24 at Subbaraonagar, Rajahmundry and on search, P.W.3 found nine packets of ganja weighing 24 kgs in the said house and P.W.3 seized the same. P.W.3 registered Exs.P-1 and P-2 as an FIR in Crime No.1317 of 2003-04 of Rajahmundry Prohibition and Excise Station under Section 8(c) read with Section 20(b) of the NDPS Act. On completion of the investigation, the charge sheet was filed.

3. After taking cognizance of the charge sheet filed by the Investigating Agency, the Court below took the case on file. During the proceedings of the case, A-5 was abstained from attending to Court, so the trial Court issued NBW. The said NBW was executed against A-5 and he was produced before this Court on 10.11.2006 and he was remanded to judicial custody. Since then, A-5 faced

the trial as an under trial prisoner along with other accused, who are on bail.

4. On appearance of the accused before the Court, the charge under Section 8(c) read with Section 20(b)(ii)(c) of the NDPS Act was framed against all the accused and the said charge was read over and explained to the accused in Telugu, for which, they pleaded not guilty and claimed for trial.

5. To substantiate the case, the prosecution got examined P.Ws.1 to 3 and marked Exs.P-1 to P-10 besides M.Os.1 to 56.

6. Thereafter all the accused were examined under Section 313 Cr.P.C. They have denied the incriminating circumstances deposed by the prosecution witnesses and stated that they are not having any defence witness.

7. After appreciating the oral and documentary evidence available on record, the learned trial Judge found the accused – A-1 to A-6 guilty of the offence under Section 8(c) read with Section 20(b)(ii)(C) of the NDPS Act and sentenced them as stated above. Aggrieved by the same, the accused – A-1 to A-6 preferred the present appeal.

8. Heard and perused the entire material on record.

9. The learned trial Judge relied on the evidence of the mediator and also the investigation officer, who inspected the vehicle and seized the property and also completed the investigation and filed the charge sheet. As far as the seizure, recovery and the contraband is concerned, there are no serious discrepancies in the evidence adduced by the prosecution and the evidence is also not discredited by the appellants/accused by way of cross-examination and as far as the compliance of the

mandatory provisions are also concerned, absolutely there is nothing on record to show that the prosecution failed to comply with the mandatory provisions concerned.

10. P.W.1, then Village Assistant Secretary of Subbarao Nagar, Rajahmundry, deposed that on the word of Excise Party, he went to Excise Police Station, Rajahmundry, from there the Excise Police headed by Superintendent of Excise Police, P.W.1 and Satyanarayana, an employee in Irrigation Department proceeded to S.B.I. Colony, which is on the road leading from Lalacheruvu to Subbarao Nagar, Rajahmundry and Excise Police stopped the car coming from Lalacheruvu and in the car, they noticed driver and two ladies in the front seat of the car and in the rear seat three male persons and they are all six accused and it is also in his evidence that one Krishna Kanth (A-1) disclosed that ganja is available in the dicky of the car and the Excise Police got opened the dicky and noticed 18 packets and they were opened, they contained ganja.

11. On perusal of the evidence adduced by the prosecution, it is noticed that A-1 was driving the vehicle Contessa Car bearing No.MH 01 P 3905 and when the same was intercepted by P.W.1 along with his other staff, and on enquiry, A-1, who is the driver of that car, informed that the contraband of Ganja is available in the dicky of the car and on his confession, the officials opened the dicky and found ganja of 173 kgs in 18 packets.

12. As far as the evidence adduced by the prosecution with regard to A-2 to A-6 is concerned, A-2 to A-6 also stated the same as A-1 and there is nothing on record to connect A-2 to A-6

in transporting the said contraband. The prosecution failed to establish the case against A-2 to A-6 by any clinching and admissible evidence to substantiate that the said persons are having knowledge about the contraband and also regarding conscious possession of the said contraband. Hence, this Court is of the view that the prosecution has failed to establish that A-2 to A-6 are connected with the alleged crime charged against them. Hence, this Court is of the view that the conviction and the sentences imposed by the trial Court against appellants 2 to 6 - A-2 to A-6 are liable to be set aside and appellants 2 to 6 - A-2 to A-6 are entitled for acquittal.

13. As far as the 1st appellant-A-1 is concerned, on the confession made by A-1, P.W.1 along with his staff has not only recovered the said contraband from the vehicle, but also, proceeded to the house bearing D.No.67-24-24 at Subbaraonagar, Rajahmundry, along with A-1, where P.W.3 found nine packets of ganja. Hence, the prosecution was able to establish the fact that A-1 was having conscious possession of the said ganja and also he has identified the other place where some part of the contraband was recovered by the investigation agency. Hence, this Court is of the view that the prosecution was able to establish the crime as far as A-1 is concerned. Therefore, this Court is not inclined to interfere with the judgment of the trial Court as far as A-1 is concerned, and hence, the appeal is liable to be dismissed as far as A-1 is concerned.

14. In the result, the Criminal Appeal is dismissed as far as 1st appellant - A-1 is concerned. As far as appellant Nos.2 to 6 - A-2 to A-6 are concerned, the Criminal Appeal is allowed by setting

aside the conviction and sentences imposed by the Special Sessions Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (I Additional Sessions Judge's Court), East Godavari at Rajahmundry, against appellants 2 to 6 – A-2 to A-6 for the offence under Section 8(c) read with Section 20(b)(ii)(C) of the Act, vide judgment, dated 19.01.2007, rendered in NDPS SC No.30 of 2006. The appellants 2 to 6 – A-2 to A-6 are acquitted for the above said offence. Fine amount paid, if any, shall be refunded to the appellants 2 to 6 – A-2 to 6. Bail bonds shall stand cancelled and the sureties are discharged.

15. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.

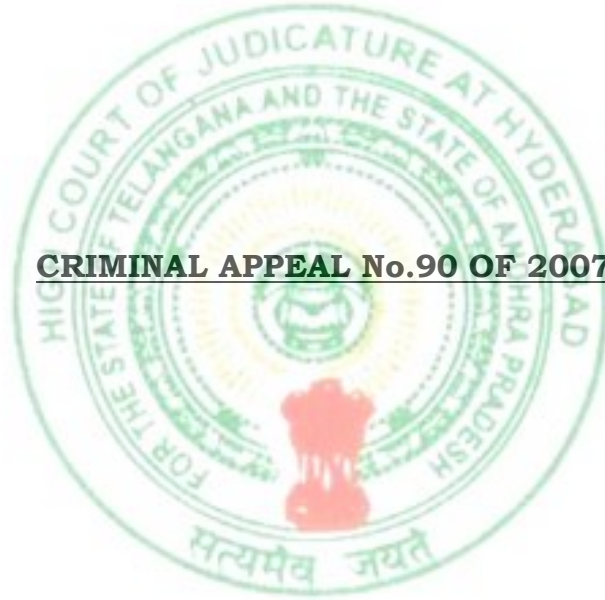


RAJA ELANGO, J

Date: 13th October, 2016

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