

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

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THE HONOURABLE DR.JUSTICE.S.VIMALA

Cr1.R.C.No.1114 of 2017

Meenakshi Sundaram

... Revision Petitioner /
Accused

Vs

State By

The Sub Inspector of Police,
R-1 Mambalam Police Station,
T.Nagar, Chennai - 600 017.

... Respondent / Complainant
(Cr.No.10 of 2017)

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. praying to call for the records in the order of conviction and sentence dated 02.03.2017 in C.C.No.81 of 2017 passed by the learned XVII Metropolitan Magistrate, Chennai and to set aside the same so far as the petitioner is concerned.

For Petitioner	:	Mr.P.K.Ilavarasan
For Respondent	:	Mr.V.Arul
		Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed by the first accused, Meenakshi Sundaram, aged 43 years, who has been found guilty by the learned XVII Metropolitan Magistrate, Chennai, on his admitting his guilt.

2. The case of the prosecution is that on 02.01.2017, the Defacto Complainant S.Srinivasan, Sub Inspector of Police, R1 Mambalam Police Station, T.Nagar, Chennai, while on duty along with two other Police Constables discharging their patrolling duty received information about the sale of prohibited products at T.Nagar. Based on the said information, they went to the occurrence place, i.e. Madley Road, T.Nagar, Chennai, at about 17.30 hrs. where they found a small crowd and three persons, namely, Meenakshi Sundaram, and two others, namely, Yuvaraj and Shaji, were found to be selling tobacco products. On the arrival of the police, the said persons tried to run from the said place. However, the said persons were apprehended and on enquiry, they were found to be selling

tobacco products, contrary to law and from their person, the products were also seized. While products amounting to a sum of Rs.3,73,275/- was seized from Meenakshi Sundaram, products worth Rs.58,550/- and Rs.10,305/- were recovered from Yuvaraj and Shaji. On the basis of the said seizure, a case was registered in Cr.No.10 of 2017 under Section 24(1) of the Cigarette and other Tobacco Products Act, 2003 (hereinafter referred to as the Act). After the investigation was over, charge sheet was filed in C.C.No.81 of 2017 before the learned XVII Metropolitan Magistrate, Chennai. When the charges were read over to the accused, they pleaded guilty. Accepting their plea of guilt, the learned Magistrate ordered that the products amounting to a sum of Rs.4,42,130/- seized from the accused persons be deposited to the Government. Further, the accused were found guilty under section 24(1) of the Act and each of the accused has been directed to pay a sum of Rs.200/- as fine, in default, to under simple imprisonment for a period of one week. The case properties have been ordered to be destroyed after the appeal time. Challenging this, the accused herein has filed this Criminal Revision Case.

3. The main contention raised by the learned counsel for the revision petitioner is that neither the First Information Report nor the Final report nor even the substance of the allegation, that was posed to the accused, make out any offence under Section 6 of the Act or Section 24(1) of the Act and therefore, the therefore, no offence under the above two sections have been made out and, in such a situation, the admission of the accused is not binding. It is also pointed out that it is not the allegation that the sale was to a person under 18 years of age or it is alleged that the area was within the radius of 100 yards of any educational institution. Therefore, the conviction and sentence is unsustainable and the same has to be set aside.

4. Heard the learned Additional Public Prosecutor on the submissions made by the learned counsel for the revision petitioner and perused the material available on records.

5. A perusal of the entire records reveal that there is no allegation in the FIR that the sale was to a person under 18 years of age or that the sale was within the radius of 100 yards of any educational institution. Therefore, the proceedings against the accused person is neither permissible under Section 6 nor under Section 24(1) of the Act. If the accused had admitted the offence without understanding/knowing the ingredients of section of law / law itself, then the admission, by itself is an invalid admission. In other words, the admission is not with reference to contents or ingredients of Section 6 or Section 24(1) of the Act. Therefore, the admission, even taken at face value do not show that the accused is guilty under Section 6 or Section 24(1) of the Act

and the proceedings before the lower Court is devoid of merits. Therefore, the conviction and sentence imposed upon the first accused, namely, Meenakshi Sundaram (Revision Petitioner herein) has to be set aside as rightly contended by the learned counsel for the revision petitioner.

6. In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner herein are set aside. The amount that was recovered from the petitioner herein, viz., Meenakshi Sundaram is ordered to be returned to him.

Assistant Registrar
Dt.25.1.18

//True Copy//

Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate,
Chennai
- 2.-do- thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Section Officer,
Criminal Section, High court, Madras.
- 4.The Public Prosector,
High Court, Madras.

+1 cc to Mr.P.k.Ilavarasan,advocate,sr.83799.

Kk(co)
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Cr1.R.C.No.1114 of 2017

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