

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2017

PRONOUNCED ON : 22.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.236 of 2014

Ibrahim ... Appellant / Accused

Vs.

State by:
Intelligence Officer
Narcotics Control Bureau
South Zonal Unit
Chennai.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C. to set aside the conviction of the appellant in C.C.No.37 of 2009 dated 11.12.2013 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai 600 104 by allowing this appeal.

For Appellant : Mr.M.S.Charles

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for NCB Cases

J U D G M E N T

This appeal has been filed to set aside the judgment dated 11.12.2013, passed in C.C.No.37 of 2009 by the Special Judge, II Additional Special Court under the NDPS Act, Chennai.

2. The case of the prosecution is as under:

H.Krishnamoorthy [P.W.1], Intelligence Officer, Narcotic Control Bureau, [NCB], received information on 16.02.2009 around 20.00 hrs. that, one Ibrahim [A1] and Shakila [A2] are bringing heroin from Kotta in Rajasthan by Jaipur-Chennai Express and that they will be reaching Chennai on 17.02.2009 around 09.50 hrs. The informant had also given the approximate age and other description of both Ibrahim [A1] and Shakila [A2]. The Information Report [Ex.P.1] on this aspect reads as under:

"The above said Ibrahim is aged about 45 years, about 5 1/2 feet height, wheatish complexion, medium built, stubble without moustache and the said Sakila, a Nepali woman

presently residing at Kannagi Nagar, Chennai, aged about 35 years about 5 feet."

[a] Apart from Ibrahim [A1] and Shakila [A2], the informant also gave information about the involvement of one Suresh @ Maxi and Jamal of Sri Lanka, one Chacha and his son Manu of Rajasthan, in drug trafficking. Krishnamoorthy [P.W.1] recorded the information, vide Ex.P.1 and submitted the same to Karthikeyan [P.W.4], Superintendent, NCB, who discussed with Krishnamoorthy [P.W.1] and directed him to take further action in this regard.

[b] On 17.02.2009, Krishnamoorthy [P.W.1] and a team of Officers went to the Central Railway Station in the morning and awaited the Railway announcement. He approached one Chandran [P.W.5], Assistant Sub-Inspector of

Police, Railway Protection Force and Shanmugham, Constable of Railway Protection Force and requested them to stand as witnesses. He explained to them the information with him and they also agreed to join the raid party. The arrival of Jaipur Express in Platform No.11 was announced and so, Krishnamoorthy [P.W.1], the two witnesses and their party waited at the exit point in the platform and were looking out for the duo. On spotting them, Krishnamoorthy [P.W.1] and their party intercepted them and introduced themselves as Officers of NCB and shared the information they had with them. On demand, they produced their travel ticket [Ex.P.3], which showed that they travelled in seat nos.17 and 18 in S-12 compartment.

[c] As regards the contraband, Ibrahim [A1] came forward to take it out from the bag that was being carried by Shakila [A2] and handed over the same to Krishnamoorthy [P.W.1]. The contraband was weighed and it was found to be of 850 gms. Krishnamoorthy P.W.1 tested the powder with the Field Test Kit and it answered positive for heroin. Krishnamoorthy [P.W.1] took two samples of 5 gms. each and marked them as S1 [M.O.6] and S2 [M.O.7]. The main contraband and the two samples were individually packed and NCB seal no.11 was affixed thereon. The trolley bag in which the contraband was kept was also seized.

[d] Ibrahim [A1] and Shakila [A2] were given the option under Section 50 of the Narcotic Drugs and Psychotropic Substances Act [for brevity the "NDPS Act"] to be searched before a Gazetted Officer or a Magistrate and on their declining, Krishnamoorthy [P.W.1] searched the person of Ibrahim [A1] and recovered from him cash of Rs.800/- [M.O.3], Nokia Cell Phone [M.O.4], State Bank of India ATM card [Ex.P.4] and Driving Licence [Ex.P.5]. Shakila [A2] was searched by Deiva Rani, a lady sepoy and Rs.2,500/- was seized from her. They were taken

to the Office of the NCB, where, K.R.Srikanth, [P.W.3], Intelligence Officer, NCB, questioned Ibrahim [A1] and obtained a written statement in Tamil, marked as Ex.P.8.

[e] In his statement, Ibrahim [A1] stated that one Jamal, a narcotic dealer had introduced him to the drug trade; that one D.F.Suresh of Colombo gave Rs.50,000/- and asked him to collect the drug from Jamal and bring it to Chennai; that on 01.02.2009, he left with Shakila [A2] and Jamal by GT Express for Bhopal; from Bhopal, he went to Rajasthan and took a house there; that Jamal organised 1 kg of heroin through one Burkath Bai; that he handed over the handbag to Shakila [A2]; that he was intending to hand it over to D.F.Suresh in Chennai; that when he came with Shakila [A2], he was apprehended by the Officers at the Railway Station.

[f] Ibrahim [A1] was arrested by Sivaraman [P.W.2] on 18.02.2009 at 8.30 a.m. by serving on him the Arrest Memo [Ex.P.9]. K.R.Srikanth [P.W.3], Intelligence Officer, NCB questioned Shakila [A2] and recorded her statement, which was marked as Ex.P.22. K.R.Srikanth [P.W.3] arrested Shakila [A2] by serving on her the Arrest Memo [Ex.P.23]. K.R.Srikanth [P.W.3] submitted a report [Ex.P.20] under Section 57 of the NDPS Act to the Superintendent, NCB.

[g] Sivaraman [P.W.2] prepared the Remand Application and produced both the accused along with the seized contraband before the IX Metropolitan Magistrate, Saidapet, Chennai on 18.02.2009 vide Ex.P.11. In the Remand Application, the learned IX Metropolitan Magistrate has endorsed "Both the accused produced, no complaints. Remanded till 04.03.2009. Produce both the accused before the Hon'ble Judge, NDPS Court on 04.03.2009." The properties that were produced before the Magistrate were returned to the NCB for production before the Special Court for NDPS Act Cases.

[h] After the transmission of the case records from the Court of the IX Metropolitan Magistrate to the Special Court for NDPS Act Cases, Chennai, the properties were produced before the Special Court with a requisition dated 05.03.2009, to send the sample marked S1 for Chemical Examination. Accordingly, the learned Principal Special Judge, NDPS Court, Chennai, sent sample S1 to the Tamil Nadu Forensic Science Laboratory, where the sample was tested by Ravichandran [P.W.7]. Ravichandran [P.W.7], in his evidence as well in the Test Report [Ex.P.35], has opined as follows:

"Quantitative determination of Diacetyl
morphine content
The Diacetyl morphine content in the given

submission was examined by volumetric method of analysis as per the procedure laid down in official methods of analysis of AOAC International. The percentage of Diacetylmorphine content was found to be 39.90 w/w

Note: (1) Diacetyl morphine is traded in the name of Heroin.

(2) AOAC Association of official analytical chemists.

Return of the unexpended portion sample: A sealed cover containing 2.3550 gms of unexpended portion of the above sample with the facsimile impression of this office seal affixed here is returned."

[i] After conducting investigation, a complaint was filed against Ibrahim [A1], Shakila [A2], Suresh [A3], Jamal [A4], Chacha [A5], Mannu [A6] and Burkath Bai [A7] for the offences under Section 8(c) read with Sections 21, 27-A, 28 and 29 of the NDPS Act before the Special Court, Chennai. A3 to A7 were shown as absconding accused and therefore, the case against them was split up.

[j] The trial Court framed charges as against Ibrahim [A1] and Shakila [A2] under Sections 8(c) read with 21(c), 8(c) read with 28 and 8(c) read with 29 of the NDPS Act and an additional charge for the offence under Section 14 of the Foreigners Act, 1946 for not possessing necessary immigration documents for their presence in India, they being foreigners. Both the accused pleaded 'not guilty'.

3. To prove the case, the prosecution examined 8 witnesses, marked 38 exhibits and 7 material objects. When the accused were questioned under Section 313 Cr.P.C, they denied the incriminating circumstances. No witness was examined on behalf of the accused nor any document marked.

4. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 11.12.2013 in C.C.No.37 of 2009, acquitted Shakila [A2] of all the charges, but, convicted Ibrahim [A1] for the offence under Section 8(c) read with 21(c) of the NDPS Act and sentenced him to undergo 10 years Rigorous Imprisonment and pay a fine of Rs.1,00,000/-, in default to undergo two months Rigorous Imprisonment. However, Ibrahim [A1] was acquitted for the offences under Section 8(c) read with 28 and 29 of the NDPS Act and Section 14 of the Foreigners Act. Challenging the conviction and sentence, Ibrahim [A1] is before this Court.

5. Heard the learned counsel for the appellant and Mr.N.P.Kumar, learned Special Public Prosecutor for NCB Cases.

6. Learned counsel for the appellant contended as follows:

[a] that there is no proper compliance of Section 42 of the NDPS Act and that the information was not properly recorded and sent to the official superior as required by the said Section.

(b) that there is violation of Section 50 of the NDPS Act, inasmuch as option to be searched in the presence of a Gazetted Officer or a Magistrate was not properly given to the appellant. Strong reliance was placed on the judgments of the Supreme Court in Dilip and another vs. State of Madhya Pradesh [(2007) 1 SCC 450], Union of India vs. Shah Alam and another [(2009) 16 SCC 644]; and State of Rajasthan vs. Parmanand and another [(2014) 5 SCC 345].

(c) that the Officials should not have called upon the members of the Railway Protection Force to stand as independent witnesses and they should have called upon two members from the public to stand as witnesses.

(d) that the confession statement has been obtained under coercion and threat and therefore, the same cannot be relied upon to fasten criminal liability. Reliance was placed on Tofan Singh vs. State of Tamil Nadu [(2013) 16 SCC 31].

(e) that the evidence of Krishnamoorthy [P.W.1] has not been properly corroborated and there are contradictions between testimony of Krishnamoorthy [P.W.1] and Chandran [P.W.5].

7. Per contra, learned Special Public Prosecutor for NCB Cases, refuted the contentions.

8. This Court gave its anxious consideration to the rival submissions.

9. Krishnamoorthy [P.W.1], in his evidence, has stated that he received information on 16.02.2009 that one Suresh @ Maxi, Jamal, Mandsaur Chacha, Manu , Ibrahim [A1], Shakila [A2] and Burkath Bai are involved in drug trafficking and that Ibrahim [A1] and Shakila [A2] are coming by Jaipur Express from Kotta, Rajasthan, with drugs and will be reaching Chennai on 17.02.2009. Krishnamoorthy [P.W.1] recorded the information and submitted the same to the Superintendent, NCB, vide Ex.P.1. He further deposed that on 17.02.2009, he went with a team of Officers to the Central Railway Station and requested Chandran [P.W.5], Assistant Sub-Inspector of Police, RPF and Shanmugam, Constable, Railway Protection Force to stand as witnesses, after sharing the information he had with him. After the arrival of

Jaipur Express in Platform No.11, he waited at the exit point and spotted the two persons whose identity he already had and intercepted them. When they were questioned, they handed over a bag, from which, 850 gms of heroin was seized. He tested the powder with a Field Test Kit and it answered positive for heroin. He drew two samples of 5 gms. each and sealed the main contraband and the two samples with NCB seal. The main contraband was marked as M.O.1, the travel bag was marked as M.O.2., the samples were marked as M.Os.6 and 7, the travel ticket was obtained from the accused and it was marked as Ex.P.3.

[a] In his evidence, he stated that before searching the bag, he gave them option under Section 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate, which they declined. Ibrahim [A1] was carrying another bag and it was found to contain his clothes and therefore, it was handed over back to him. On the personal search of Ibrahim [A1], Indian currency of Rs.800/- [M.O.3] and Nokia Cell [M.O.4] were seized. Shakila [A2] was searched by Deivarani, the woman sepoy and from her possession, Rs.2,500/- [M.O.5] was seized. He further deposed that he prepared a Mahazar [Ex.P.6] in the presence of the accused and the two witnesses, viz., Chandran [P.W.5] and Shanmugam, seized the contraband and the accused were taken to the NCB Office.

[b] Krishnamoorthy [P.W.1] was examined-in-chief on 25.08.2011 and he was cross-examined by the accused on 04.04.2012. He was asked whether he had taken any steps to search the house of Shakila [A2] on receiving information, since the address of Shakila [A2] was available in Ex.P.1, for which he stated that he did not. This cannot be faulted, because had the Officers searched Shakila's [A2] house even before her arrival to Chennai, she would have got down en route.

[c] He was questioned about the identity of the accused, for which, he stated that his informant told him that Shakila [A2] is a Nepali. With the information available in Ex.P.1 relating to the features of Ibrahim [A1] and Shakila [A2], it will not be very difficult to identify them in a State like Tamil Nadu unlike in north-eastern States.

[d] When he was asked about the independent witnesses, he has stated as follows:

"I have selected the independent witnesses from Railway Protection Force (RPF)."

10. Learned counsel for the appellant submitted that the Railway Protection Force personnel cannot be said to be independent witnesses and that independent witnesses mean, respectable persons of the locality. Except in Section 100(4)

Cr.P.C., there is no other provision in the Code which speaks about the need to have independent and respectable persons as witnesses for a search. Section 100(4) Cr.P.C. deals with search of a place. In other words, if a place is to be searched, Section 100(4) Cr.P.C. casts a duty upon the Officer to call upon two or more independent and respectable inhabitants of their locality, in which the place to be searched is situate. In the instant case, the NCB Officers did not search the place, but they intercepted two persons who were said to be carrying drugs with them and for that search, the provisions of Section 100(4) Cr.P.C. may not apply. In State of Uttar Pradesh vs. Zakauallah [(1998) 1 SCC 557], the Supreme Court has held as follows:

"10. The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicated person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that they are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose whatsoever."

11. It is common knowledge that in the Railway Station, there will be floating population and people will be in a hurry either to take a train or go home and they will not readily oblige to stand as witness. Hence, requesting the members of the RPF to stand as witness cannot vitiate the seizure, because the RPF personnel are not depending upon the NCB for their sustenance. As pointed out by the Supreme Court in Zakauallah (supra), every person should be presumed to be an independent person, unless he depends upon the police for his livelihood.

12. Chandran [P.W.5], in his evidence, has stated that he

was working as Assistant Sub-Inspector of Police in the RPF and that on 17.02.2009, NCB Officials requested him and Shanmugam to stand as witnesses and shared the information with them and Shanmugam and he agreed and together with the NCB Officials, they waited in Platform No.11 and were watching the movement of passengers; that they noticed a 45 year old man with a 35 year old Nepali lady and that when the duo came towards the RPF security table, they were intercepted by the NCB Officials, who revealed their identity; that the Officers asked the accused as to whether they should be searched before a Gazetted Officer or a Magistrate, which offer was declined by them; that when the Officers asked whether they were carrying any drugs, Ibrahim [A1] took a bag from Shakila [A2] and from beneath the bag, handed over a polythene cover containing the drug to the Officers; that the Officers tested the drug with their Field Test Kit and weighed the same; that it was found to weigh 850 gms; that they drew two samples of 5 gms. each and sealed the main contraband and two samples with their seal; that they also seized the trolley bag; that the NCB Officers searched the person of Ibrahim [A1] and recovered Rs.800/- [M.O.3], Cell Phone [M.O.4], Railway ticket [Ex.P.3], ATM card [Ex.P.4] and Driving licence [Ex.P.5]; that Shakila [A2] was searched by a lady sepoy and from her, a sum of Rs.2,500/- was seized; that they prepared a Seizure Mahazar, in which, he identified the signature; that in the cross-examination, he was asked as to whether there was a duty roster, for which, he stated that there is an attendance register and that there is no duty roster as such; that when he was asked as to whether he had taken permission from his higher officers for being witness, he stated in the affirmative and added that he obtained permission orally from his superior officers; that he was questioned about the statement he had given under Section 67 of the NDPS Act, for which he stated that he had given the statement and the said statement was marked as Ex.P.29; that it was suggested to him that he was not at all in duty on 17.02.2009 and that since he is a Central Government staff, he had obliged the NCB Officers, who are also Central Government staff and had signed the Mahazar, without actually being present in the place of occurrence.

13. In the opinion of this Court, the defence were not able to make any dent in the evidence of Krishnamoorthy [P.W.1] and K.Chandran [P.W.5]. The evidence of Krishnamoorthy [P.W.1], has been sufficiently corroborated by the evidence of Chandran [P.W.5].

14. As regards the contention that there was violation of Section 42 of the NDPS Act, this Court did not find any infraction. In fact, Section 42 of the NDPS Act will not apply to this case and only Section 43 of the NDPS Act will apply,

since the interception and seizure was in a public place.

15. As regards the contention of the learned counsel for the appellant that search of bag would also attract the provisions of Section 50 of the NDPS Act, in this case, it is seen from the evidence of Krishnamoorthy [P.W.1] and Chandran [P.W.5] that when the Officers intercepted and introduced themselves, Ibrahim [A1] came forward to hand over the travel bag [M.O.2] from Shakila [A2] and took out heroin from inside the bag and gave it to the Officers. In the cross-examination of Chandran [P.W.5], he has stated clearly as follows:

"me;j igia Kjypy; ,uz;lhk; vjphp irfpyh
jhd; ifapy; itj;jpUe;jhh; mij mthplkpUe;J Kjy;
vjphp bgw;W vd;rpqp mjpgfhpfspk; bfhLj;jhh;.@

The free English translation of the aforesaid part of the evidence of Chandran [P.W.5] is that the bag was with Shakila [A2] and Ibrahim [A1] took the bag from Shakila [A2] and handed over the same to the Officers.

16. Though in the three judgments relied upon by the Defence, the Supreme Court has stated that search of bag would also attract Section 50 of the NDPS Act, in the following 11 judgments, the Supreme Court has held that Section 50 of the NDPS Act will apply only when there is a search of the person and not the bag.

- (1) Abdul Rashid Ibrahim Mansuri vs. State of Gujarat [2000 (1) Supreme 363]
- (2) Birakishore Kar v. State of Orissa [JT 1999 (10) SC 350]
- (3) Gurbax Singh vs. State of Haryana [(2001) 1 Supreme 625]
- (4) Kanhaiya Lal vs. State of Madhya Pradesh, [2000 (10) SCC 380]
- (5) Madan Lal and another vs. State of Himachal Pradesh [(2003) 6 Supreme 382]
- (6) Saikou Jabbi vs. State of Maharashtra [2003 (8) Supreme 582]
- (7) State of Himachal Pradesh v. Pawan Kumar [2005 AIR SCW 2154]
- (8) State of Rajasthan v. Daulat Ram [2005 AIR SCW 4423]

- (9) State of Rajasthan v. Babu Ram [2007 AIR SCW 3799]
- (10) Ajmer Singh v. State of Haryana [(2010) 3 SCC 746]
- (11) Makhan Singh vs. State of Haryana, [(2015) 12 SCC 247]

17. In State of Punjab vs. Baldev Singh [(1999) 6 SCC 172]

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc.."

(emphasis supplied)

.....

57(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search."

18. In Vijaysinh Chandubha Jadeja vs. State of Gujarat [(2011) 1 SCC 609], the Constitution Bench clearly held as follows:

"29. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search."

(emphasis supplied)

Therefore, in the opinion of this Court, provisions of Section 50 of the NDPS Act will not apply to the facts and circumstances of the case.

19. Now, coming to the confession statement of the appellant, it is seen that when the accused was produced before the Remanding Magistrate, he did not complain of ill-treatment by the Officers and the Magistrate has recorded 'No Complaint' on the Remand Application [Ex.P.11]. In Tofan Singh (supra), the Supreme Court has doubted the correctness of the admissibility of a confession recorded by a Revenue Officer under Section 67 of the NDPS Act and has referred the matter for an authoritative pronouncement by a larger Bench. However,

this Court is bound to follow the law that obtains now.

20. In *Prabhulal (supra)*, the Supreme Court has held as follows:

"5.Further, it is also to be borne in mind that the appellants did not make any complaint before the Magistrate before whom they were produced complaining of any torture or harassment. It is only when their statements were recorded by the trial Judge under Section 313 of the Code of Criminal Procedure that a vague stand about the torture was taken. Under these circumstances, the confessional statements cannot be held to be involuntary. The statements were voluntarily made and can, thus, be made the basis of the appellants' conviction."

21. In *A.K.Mehaboob vs. Intelligence Officer, Narcotics Control Bureau [(2001) 10 SCC 203]*, the Supreme Court has observed as under:

"It must be remembered that the appellant Naushad has no case that when he was produced before the Magistrate immediately after his arrest, that he made any grievance of any maltreatment administered to him by the members of the Narcotics Control Bureau."

Therefore, this Court has no reason to believe that the accused was subjected to torture and the confession was obtained thereafter.

22. That apart, this is not a case based on circumstantial evidence. In other words, the culpability of the appellant is not fixed merely on the confession statement. The confession statement only shows from where he had obtained the contraband and where the contraband was entitled to be delivered. The fact remains that the contraband was in his custody and it was seized therefrom and therefore, the two presumptions under Sections 35 and 54 of the NDPS Act would apply. Sections 35 and 54, read as under:

"35. Presumption of culpable mental state.:-

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

"54. Presumption from possession of illicit articles.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

23. In this case, the Officers have taken steps to obtain the Call Detail Records of Ibrahim [A1] from the service provider in May 2009, vide Ex.P.32. However, in view of the law laid down by the Supreme Court in Anvar P.V. v. Basheer and others [(2014) 10 SCC 473], the Call Detail Records become inadmissible in evidence, as they do not have necessary certification under Section 65-B of the Evidence Act. When the Call Detail Records were obtained in the year 2009, the legal position was as laid by the Supreme Court in State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600]. Only in the year 2014, Anvar (supra) changed the legal position and on account of that, the Call Detail Records have become inadmissible and cannot be used to corroborate the confession statement of the appellant.

24. Learned counsel further submitted that the appellant has retracted the confession statement subsequently and therefore, this Court should not place much reliance thereon. In the opinion of this Court, just because a confession is retracted, it does not lose its evidentiary value, if it is shown that the same is voluntary and truthful. In this case, there are no materials to infer that the confession statement was

involuntary.

25. As stated above, even without the confession statement, the possession of the drug has been established by the prosecution through cogent evidence. The trial Court had acquitted Shakila [A2], because the evidence showed that she was merely pulling the trolley bag [M.O.2], which was given to her by Ibrahim [A2] and when the Officers intercepted, it was Ibrahim [A1], who took out the contraband from the trolley bag and handed over the same to the Officers.

In the result, this appeal is dismissed as being devoid of merits. The conviction and sentence dated 11.12.2013 in C.C.No.37 of 2009 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, is hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Intelligence Officer
Narcotics Control Bureau
South Zonal Unit
Chennai.

2.The Special Judge,
II Additional Special Court under NDPS Act,
Chennai 600 104.

3.The Special Public Prosecutor for NCB Cases.

4.The Public Prosecutor
High Court, Madras.

+1cc to Mr.M.S.Charles, Advocate, S.R.No.91875

Cr1.A.No.236 of 2014

VGI (CO)

RRK(10/01/2018)