

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Criminal Appeal No.332 of 2014

Jeeva @ Jagan
Srilankan

.... Appellant/Accused

Versus

State through Intelligence Officer,
Narcotics Control Bureau
South Zonal Unit,
Chennai - 90.

.... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of learned Judge, Special Court for E.C.Act Cases, Salem, passed in C.C.No.105 of 2005 on 20.05.2014.

For Appellant :Mr.B.Kumar, senior counsel for
Mr.Rajan

For Respondent :Mr.N.P.Kumar,
Special Public Prosecutor(NCB Cases)

JUDGMENT

This appeal arises against the judgment of learned Judge, Special Court for E.C.Act Cases, Salem, passed in C.C.No.105 of 2005 on 20.05.2014.

2. Prosecution case is that appellant/accused, a Srilankan, on the instructions of one Ameen, another Srilankan, came to India, contacted one Gopal at Rameshwaram over phone, on 02.05.2004 contacted one Manoharan, Murthy, Alagumuthu sent by said Gopal and went to Bangalore along with them on 02.05.2004 and as instructed by Ameen, appellant/accused contacted a person, received 21 kgs. of heroin from him, packed them in three covers, handed over the same to Manoharan, Murthy, Alagumuthu and directed them to handover the same to Gopal at Rameshwaram. While the said persons were proceeding to Rameshwaram via Salem, they have been intercepted by Narcotics Control Bureau Officials and contraband was seized. Thus,

appellant/accused has committed offences punishable u/s.8(c) r/w 21(c) and 29 of Narcotics Drugs and Psychotropic Substances Act.

3. Intelligence Officer, Narcotics Control Bureau, preferred a complaint against accused Manoharan, Moorthy, Alagumuthu, Gopal and Jeeva @ Jagan and the same was taken on file in C.C.No.15 of 2004 on the file of Special Court for E.C.Act Cases, Salem. As Gopal and Jeeva @ Jagan were absconding, the case against them was spilt up and numbered as C.C.No.105 of 2005. Pursuant to execution of non-bailable warrant, appellant/accused was apprehended and produced before Court on 26.04.2009. Thereafter, the case against the absconding accused Gopal was split up and appellant/accused was tried in this case.

4. Before trial Court, prosecution examined 10 witnesses and marked 44 exhibits and 33 material objects. None were examined on behalf of defence nor were any exhibits marked.

5.1. PW-1, Inspector of Police, who was deputed to the NCB Zone, has received information through telephone that appellant/accused was staying in Chengalpet Refugee Camp in the name of Sivakrishnan @ Nanthan. PW-1, recorded such information under Ex.P1 - and submitted the same to PW-6, Superintendent of NCB, who after perusing the same instructed PW-1 to take further action and issued Ex.P2, letter to Special Thasildar, Chengalpet Special Camp for Srilankan, requesting him to permit PW-1 to serve summons u/s.67 of NDPS Act for enquiry and necessary action. Thereafter, PW-1 went to camp and served Ex.P4, summons on appellant/accused and directed him to appear before NCB office at Chennai on the same day. On his appearance, PW-1 produced him before PW-6. PW-6 instructed PW-2, Intelligence Officer, to enquire of the accused. On enquiry, accused has given Ex.P6, voluntary confession, u/s.67 of NDPS Act before PW-2 admitting handing over of 21.900 kgs. of heroin to other accused on 03.05.2004 at Bangalore directing them to hand over the same to Gopal at Rameshwaram. Accused has also admitted that he has informed his name as Jeeva @ Jagan @ Marumagam to other accused. In the enquiry, appellant/accused has also identified Ex.P7 - computer photographs of other accused. Thereafter, Non-bailable Warrant issued by the Court was executed by PW-2 and appellant/accused has been produced before Court for judicial custody, the next day.

5.2. PW-3 was employed as Intelligence Officer, NCB, Chennai, from October 2002 to 2005. PW-3 spoke to obtaining information on 30.04.2004 at about 23.00 hours through telephone and reducing the same into writing, Ex.P9. PW-2 spoke to intercepting other accused, conducting search, seizure of contraband, serving summons on the accused, recording of confessions u/s.67 of NDPS Act, producing accused before Court,

forwarding seized contraband for chemical analysis and obtaining reports. PWs.4 and 9, NCB Officers, who assisted PW-3, have also spoken on the same lines.

5.3. PWs.5 and 7, NCB Officers, spoke to examining the other accused and recording their confessions.

5.4. PW-8, Assistant Chemical Examiner, spoke to receiving samples for chemical analysis and of submitting Ex.P44, test report.

5.5. PW-10, Special Sub-Inspector of Police, Annathanapatti, spoke to witnessing the enquiry conducted by NCB officers, seizure of 21.900 kgs. of heroin and that on issuance of summons, he has given statement.

5.6. On appreciation of materials before it, trial Court, under judgment dated 20.05.2014, rendered a finding of conviction and sentenced him to 10 years R.I. and fine of Rs.1,00,000/- i/d 1 year S.I. for each of the offences u/s.8(c) r/w 21(c) and 8(c) r/w 29 of NDPS Act. Trial Court directed that sentences run concurrently. Against such finding the present appeal has been filed.

6. Heard learned counsel for appellant and learned Special Public Prosecutor (NCB cases).

7. This appeal succeeds on two grounds in law. NBW has been issued against the appellant/accused on 22.07.2009. This, is pursuant to he and another accused having absconded while 3 other accused faced trial in C.C.No.15 of 2004, the case against this appellant/accused and another having been split up was tried as against this accused on the apprehension of this accused on 25.08.2009 in C.C.No.105 of 2005 on the file of Special Court for E.C. Act Cases, Salem.

8. The issue of NBW against him makes clear that he already had partaken the character of an accused when he was apprehended on 25.08.2009 and the statement in Ex.P.6 was recorded. ExP.6 confession cannot be relied upon as doing so would violate Art. 20(3) of the Constitution of India states thus:

20. Protection in respect of conviction for offences:

...(3) No person accused of any offence shall be compelled to be a witness against himself.

Sec.30 of the Indian Evidence Act, 1872 reads as follows:

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence: When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

The reliance by the Trial Court on the statement of three other accused who have not been tried along with this appellant/accused is erroneous in law. It becomes unnecessary to consider the further ground raised on behalf of the appellant/accused viz., the prosecution has not proved the appellant/accused who has been detained in the Srilankan Refugees camp at Chengalpattu is the accused Jeeva @ Jagan involved in C.C.No.105 of 2005 on the file of the respondent.

The appeal shall stand allowed. The judgment passed by the learned Judge, Special Court for E.C.Act Cases, Salem, passed in C.C.No.105 of 2005 on 20.05.2014, shall stand set aside. The appellant is acquitted of the charges against him in C.C.No.105 of 2005. Fine, if any, paid, shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

- 1.The Judge,
Special Court for E.C.Act Cases,
Salem.
- 2.The Intelligence Officer,
Narcotics Control Bureau
South Zonal Unit,
Chennai - 90.

3.The Public Prosecutor, (NCB Cases)
High Court,
Madras - 600 104.

4.The Superintendent,
Central Prison, Coimbatore.

5.The Superintendent,
Central Prison, Puzhal, Chennai.

6.The District Collector,
Coimbatore.

7.The District Collector,
Chennai.

8.The Director General of Police,
Mylapore, Chennai.

+1cc to Mr.M.Rajan, Advocate Sr.65370

Criminal Appeal No.332 of 2014

gp[co]
srg 19/09/2018



WEB COPY