

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Criminal Appeal No.516 of 2014

Baskaran @ Panja @ Raja
S/o.Late Suppaiah

.... Appellant/Accused

Versus

State by:
The Intelligence Officer,
Narcotics Control Bureau
South Zone Unit,
Chennai.
(F.No.48/1/3/2007-NCB/MDS)

.... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. r/w 36-B of NDPS Act, 1985, against the judgment of learned Special Judge, I Additional Special Court under NDPS Act, Chennai, passed in C.C.No.64 of 2007 on 09.01.2014.

For Appellant : Mrs.Mamta Pandey

For Respondent : Mr.N.P.Kumar,

Special Public Prosecutor (NCB Cases)

JUDGMENT

This appeal arises against the judgment of learned Special Judge, I Additional Special Court under NDPS Act, Chennai, passed in C.C.No.64 of 2007 on 09.01.2014.

2. Appellant/A2 faced trial in C.C.No.64 of 2007 on the file of learned Special Judge, I Additional Special Court under NDPS Act, Chennai, for offences u/s.8(c) r/w 21(c), 8(c) r/w 27 (A), 8(c) r/w 28 & 8(c) r/w 29 of NDPS Act, 1985 amended by Act 9/2001. The case of the prosecution is that the appellant/accused was found in possession of 2.825 kgs. of heroin. Samples were collected and sealed. Summons were served on the appellant u/s.67 of the NDPS Act and his voluntary statement was recorded. Appellant/A2 was arrested and remanded to judicial custody.

3. Before the trial Court, the prosecution examined nine witnesses and marked 65 exhibits. None were examined on behalf

of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 09.01.2014, while acquitting the appellant/A2 of offences u/s.8 (c) r/w 28 and 8(c) r/w 29 of NDPS Act convicted him for offences u/s.8(c) r/w 21(c) of NDPS Act and sentenced him to 10 years R.I. and fine of Rs.1,00,000/- i/d 3 months R.I. There against the present appeal has been filed.

4. Heard learned counsel for appellant/accused and learned Special Public Prosecutor (NCB Cases).

5. Learned counsel for appellant/accused submitted that PW-3, Assistant Scientific Analyst has analysed the sample sent by the trial Court and his report informed the contraband to be heroin. Such witness had admitted to conducting only the qualitative analysis test and through such test, the percentage of purity of the substance could not be determined. He had further deposed that to do so, a quantitative analysis test would be necessary. He had received the requisition for qualitative analysis test under communication of the Special Judge (NDPS Act) in D.No.365 of 2007 dated 30.04.2007 (Ex.P18) and he has submitted his report under communication dated 29.06.2007 (Ex.P21). The quantitative analysis test had been called for under communication of the Special Judge under D.No.366 of 2007 dated 30.04.2007 and the report there regards is dated 20.06.2007 (Ex.P50). According to learned counsel, Ex.P21 only informs the presence of heroin in the sample examined. The quantitative analysis report in Ex.P50 was for the first time brought before Court only on 26.03.2013. The same was unreliable, particularly, where the same had been prepared by a Scientific Assistant, Grade II, a person not covered by Section 293 Cr.P.C. The report had come to Court 7 years after the occurrence. Learned counsel contended that in circumstance where there was no definite proof of the quantity of heroin in the contraband seized, the offence would fall only under Section 21 (b) and not under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. On such consideration, Court below would not have imposed the maximum sentence of ten years for which such offence was punishable.

6. Learned Special Public Prosecutor (NDPS Cases) clarified that the quantitative analysis report was marked by the defence during the cross-examination of PW-1 and before examination of the investigating officer, PW-8. The Special Judge had made requisitions both for qualitative and quantitative analysis. The qualitative analysis was called for from the customs laboratory while the quantitative analysis was called for from the State Forensic Laboratory. Under Ex.P50 dated 20.06.2007, the Forensic Science Department (Government of Tamil Nadu), Narcotics Division, Chennai, submitted the Analysis Report in Nar No.71/2007 dated 20.06.2007 and as is evident therefrom, the

same directly was sent to the Special Judge. Learned Special Public Prosecutor (NDPS Cases) submitted that there is thus no merit in the contention of learned counsel for petitioner of such document coming before Court 7 years late. While examined as PW-8, the Investigating Officer, had also deposed to the fact that Ex.P50 was the quantitative analysis report. The trial Court had taken into consideration the percentage of heroin as reflected in Ex.P50 at 31.99% and found that the petitioner/second accused had carried and tried to export (2825 gms x 31.99/100) 903.72 gms. of heroin which fell within 'commercial quantity' as per entry No.56 of the Notification issued by the Central Government in S.O.1055(E) dated 19.10.2001. Learned Special Public Prosecutor further clarifies that assisted by Scientific Assistant Grade-II the quantitative analysis report had been prepared by one Karthikeyan, Assistant Director and Assistant Chemical Examiner to Government as was evident from Ex.P50. U/s.293 Cr.P.C. his report was admissible in evidence without his examination.

7. This Court has considered the rival submissions.

8. Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads thus:

"21. Punishment for contravention in relation to manufactured drugs and preparations. - Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) Where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

9. On consideration of the quantitative analysis report in Ex.P50, Court below rightly has found the quantum of heroin carried and sought to be exported by appellant to be commercial quantity.

10. Section 293 Cr.P.C. reads as follows:

"293. Reports of certain Government scientific experts.- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of- Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government Scientific Expert specified, by notification, by the Central Government for this purpose."

11. As rightly submitted by learned Special Public Prosecutor (NDPS cases), Ex.P50 informs that the same has been prepared by one Karthikeyan, Assistant Director and Assistant Chemical Examiner to Government. Such official is a Government Scientific Expert and as such his report falls within the purview of Section 293 Cr.P.C.

12. Finding no merits, the Criminal Appeal shall stand dismissed.

It is brought to notice that the appellant is yet to pay the fine imposed. Taking into consideration the facts and circumstances and the substantial sentence imposed, this Court considers it appropriate to reduce the default sentence for non-payment of fine to one month R.I.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
I Additional Special Court under NDPS Act,
Chennai.
2. The Intelligence Officer,
Narcotics Control Bureau South Zone Unit,
Chennai.
3. The Special Public Prosecutor,
For NDPS Act,
High Court,
Madras - 600 104.
4. The Superintendent, Central Prison,
Puzhal, Chennai.

+1cc to Mr.Mamta Pandey, Advocate, S.R.No.22502

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vsn(co)
rmp(02/05/17)