

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2017

PRONOUNCED ON : 21.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.601 of 2013

Karupayee

... Appellant

Vs.

Inspector of Police
NIB-CID
Chennai.

... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C. against the judgment dated 29.08.2013 under the NDPS Act, Chennai in C.C.No.66 of 2007 in Cr.No.42 of 2006 on the file of the Special Judge-II, Additional Special Court under NDPS Act, Chennai, convicting and sentencing to undergo 9 months and to pay a fine of Rs.2500/- in default to undergo further period of 2 months R.I. u/s 8(c) rw 20(b)(ii)(B) of NDPS Act.

For Appellant : Mr.W.Camyles Gandhi
For Respondent : Mr.K.Madhan
Govt.Advocate (crl.side)

JUDGMENT

This appeal has been filed against the judgment dated 29.08.2013 passed in C.C.No.66 of 2007 by the learned Special Judge-II, Additional Special Court under NDPS Act, Chennai.

2. It is the case of the prosecution that Murugaiyan [P.W.2], Sub-Inspector of Police, received information on 10.06.2006 around 10.45 a.m. that one Karuppayee W/o Perumal will be bringing ganja for sale near Stanley Medical College Hospital in Old Jail Road. Murgaiyan [P.W.2] recorded the information in Ex.P.3 and after obtaining permission from the Inspector of Police, proceeded to the spot with a team of officials, including one Shoba Rani [PW.5] the Station Sweeper. The police party intercepted the accused and introduced themselves. Thereafter, they gave her written option [Ex.P.4] under Section 50 of the Narcotic Drugs and Psychotropic Substances Act [for short "the NDPS Act"] for being searched before a Gazetted Officer or a Magistrate, which offer was declined by the accused. The accused was found in possession of a white colour bag, which, on examination by the Officers, was found to contain 1.5 kgs of ganja. Murugaiyan [P.W.2] drew two samples of 50 gms. each and sealed the samples and the main contraband with NIB seal and prepared a Seizure Mahazar [Ex.P.5]. The accused was arrested vide Arrest Memo [Ex.P.6] and was taken to the Police Station, where, an FIR [Ex.P.8] was registered for an offence under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act. A report under Section 57 of the NDPS Act [Ex.P.7] was submitted by Murugaiyan [P.W.2] to his official superior.

3. Investigation of the case was taken over by John Joseph [P.W.4], Inspector of Police, who sent the accused for remand along with the seized contraband. The Investigating Officer made a requisition [Ex.P.11] to the Special

Court for NDPS Act Cases for sending the sample to the Tamil Nadu Forensic Science Laboratory for examination. The sample was tested by M.Sankar Kumar [P.W.1], Chemical Analyst, who, in his evidence and in his report [Ex.P.2] has stated that the sample was tested and it answered positive for ganja. John Joseph [P.W.4] recorded the statement of the witnesses and completed the investigation and filed the charge sheet before the Special Court for NDPS Act Cases in C.C.No.66 of 2007 for offences under Sections 8(c) read with 20(b)(ii)(B) of the NDPS Act.

4. On the appearance of the accused, she was furnished with the copies of the relied upon documents under Section 207 Cr.P.C. and a charge under Section (8)(c) 20(b)(ii)(B) of the NDPS Act was framed against her for possession of 1.5 kgs. of ganja. When questioned by the trial Court, she pleaded not guilty.

5. To prove the charge, the prosecution examined 5 witnesses, marked 11 exhibits and 3 material objects. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against her, she denied the same. No witness was examined on behalf of the accused nor any document marked.

6. After hearing either side and analysing the evidence on record, the trial Court, by judgment dated 29.08.2013, convicted the accused for the offence

under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and sentenced her to undergo nine months Rigorous Imprisonment and to pay a fine of Rs.2,500/-, in default to undergo Rigorous Imprisonment for a further period of two months. Challenging the said conviction and sentence, this appeal has been filed.

7. Heard Mr.W.Camyles Gandhi, learned counsel for the accused/appellant and Mr.K.Madhan, learned Government Advocate (Crl.Side) appearing for the State.

8. Learned counsel for the accused submitted that Murugaiyan [P.W.2] did not conduct the search and seizure in the presence of any independent witness, though the seizure was in a public place. He also submitted that the contraband was seized on 10.06.2006, but the same was produced before the Special Court for NDPS Act Cases only on 19.08.2006, which delay has not been properly explained by the prosecution. He submitted that the option under Section 50 of the NDPS Act was not properly given to the accused and that the accused being a lady, the search could have been effected by a lady. He further submitted that Shoba Rani, [P.W.5], in her evidence, has stated that she did not know what was written in the mahazar and therefore, her evidence requires to be rejected.

9. Per contra, the learned Government Advocate [Crl.Side] refuted the contentions.

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

11. Murgaiyan [P.W.2], in his evidence, has stated that on 10.06.2006 around 10.45 a.m., he received information through his source informant that one Karuppayee, W/o Perumal is coming to old Jail Road near Stanley Medical College Hospital for selling ganja and that he recorded the information in Ex.P.3 and sent the same to the Inspector of Police [P.W.4] and after getting his permission, proceeded to the place with Pandiyan [P.W.3], Head Constable and Shoba Rani [P.W.5], the Station Sweeper and other policemen. He has further stated that he intercepted the accused and after introducing himself, gave a written option in Ex.P.4, apprising the accused about her right to be searched before a Gazette Officer or a Magistrate and that she declined the offer. She was found carrying a white bag. He has further stated that he called two persons, viz., one Ezhumalai, S/o Krishnan and one Muniyammal, W/o Ponnayan, to stand as witnesses, but they did not come forward to assist the police and therefore, he proceeded to examine the bag that was with the accused.

12. On examination, Murgaiyan [P.W.2], found that the bag contained 1.5 kgs of ganja and that he drew two samples of 50 gms. each and sealed the samples and the balance contraband and prepared a Mahazar [Ex.P.5]. Thereafter, he arrested the accused at 13.30 hrs., by serving on her the Arrest Memo [Ex.P.6] and

thereafter, she was brought to the Police Station, where FIR [Ex.P.8] was registered by the Inspector of Police [P.W.4]. He also submitted a report under Section 57 of the NDPS Act [Ex.P.7] to the Inspector of Police. In the cross-examination, he has stated that he had not noted the address of the two persons who declined to be a witness for the seizure. He was asked as to whether he had recorded in Ex.P.7 the vehicle in which he had gone, for which, he said that he had not done so. It was suggested to the witness that he had foisted a false case on the accused and that he had not seized the contraband from her. The evidence of Murugaiyan [P.W.2] stands corroborated by the evidence of Pandiyan [P.W.3] and Shoba Rani [P.W.5] and they were also subjected to cross-examination. The crux of the cross-examination was that the police had deliberately failed to call public persons as witnesses, since the case has been foisted on the accused. The law with regard to non-joining of public witnesses for seizure has been fairly settled by the Apex Court in **Akhal Ahmed vs. State of Delhi [(1999) SCC (Crl.) 425]**, wherein, it has been held that search or seizure made by the police will not become vitiated solely for the reason that the evidence is not supported by independent witness.

13. As regards the violation of Section 50 of the NDPS Act, Murugaiyan [P.W.2], Pandiyan [P.W.3] and Shoba Rani [P.W.5] have stated that a written option was given in Ex.P.4 to the accused, but she declined.

14. Be that as it may, in this case, the seizure was not pursuant to the search of the person of the accused, but the contraband was seized from a bag that was carried by the accused. Thus, for the search of a bag carried by a person, the provisions of Section 50 of the NDPS Act will not apply.

15. Mr.Shankar Kumar [P.W.1], Chemical Analyst has stated that he received a sealed cover from the Special Court for NDPS Act Cases for chemical analysis and he examined the same and gave his report [Ex.P.2] opining that it was ganja. Except suggesting to him that he had not properly conducted the test, the defence was not able to dislodge his testimony.

16. Shoba Rani [P.W.5], in her cross-examination, has stated that she does not know what was written in the Mahazar. But, that by itself, can only make her testimony doubtful and would not impeach the testimony of Murgaiyan [P.W.2] and Pandiyan [P.W.3].

17. As regards the alleged delay in sending the contraband to the Special Court for NDPS Act Cases, it is seen that the contraband was produced before the remanding Magistrate along with the accused on 10.06.2006 itself and only after the records were transmitted from the Court of the remanding Magistrate to the Special Court for NDPS Act Cases, was the contraband produced there and hence,

it cannot be stated that the contraband was not at all produced before the Court at the earliest point of time. This Court does not find any serious infirmity in the judgment of the trial Court warranting interference on facts.

In the result, the appeal stands dismissed. The judgment dated 29.08.2013 passed in C.C.No.66 of 2017 by the learned Special Judge-II, Additional Special Court under NDPS Act, Chennai is confirmed.

21.12.2017

To

1. The Inspector of Police
NIB-CID
Chennai.

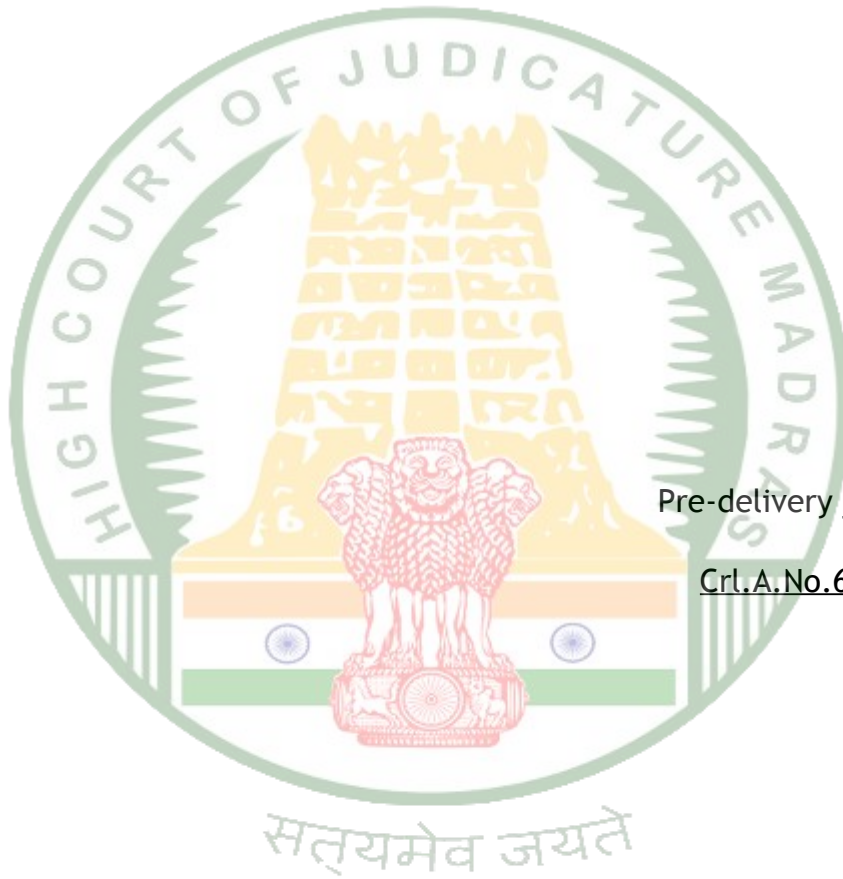
2. The Special Judge-II,
Additional Special Court under NDPS Act,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते
WEB COPY

P.N.PRAKASH, J.

gms



Pre-delivery judgment in

Crl.A.No.601 of 2013

WEB COPY

21.12.2017