

Bail Slip

The Appellant/Accused in Crl A No.12 of 2014 viz., Babu S/o Ethiraj aged 30 years was directed to be released on bail as per order of this Court dated 01.04.2014 made in MP No.2 of 2014 in Crl A No.12 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.12 of 2014

Babu

.. Appellant

.. Vs ..

State rep. By Inspector of Police,
K6, T.P Chatram Police Station,
Chennai.

.. Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentences passed by the Principal Special Judge, Special Court under EC&NDPS Act, Chennai, and made in C.C.No.53 of 2005 by judgment dated 22.10.2013.

For Appellant : Mr.T.S.Srinivasan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

JUDGMENT

The present Criminal Appeal has been filed by the 1st accused/appellant to set aside the conviction and sentence passed by the Principal Special Judge, Special Court under EC & NDPS Act, Chennai, made in C.C.No.53 of 2005 by judgment dated 22.10.2013.

2. The case of the prosecution is that on 10.04.2004, P.W.1 P.V.Naveen, when he was working as a Sub-Inspector of Police, received a call from the informant at 4.15pm. After recording the information under Ex.P.1., he placed the information before

the P.W.4 Angusamy, Inspector of Police, for his approval. On approval of the said P.W.4, P.W.1 P.V.Naveen, went to the scene of occurrence along with P.W.2 Ponnuthurai and one Kamalakannan. At that time, the appellant came with white colour polythene cover. After verifying address and other particulars of the appellant, P.W.1, informed to him about the right provided to appellant for choosing mode of search either in the presence of Gazetted Officer or in the presence of Judicial Magistrate, for which, the appellant replied that there is no necessity for conducting search either in the presence of Gazetted Officer or in the presence of Judicial Magistrate, thereby, P.W.1 requested one Annamalai and Gurusamy, who are the platform vendors for standing as witnesses. But, they refused to stand as witnesses. So, without any alternative in the presence of P.W.2 Ponnuthurai and one Kamalakannan, who are working as Head Constables in Police Department, P.W.2 issued a search notice to the appellant under Ex.P.2. P.W.2 made search on the appellant and took the white colour polythene packet from the custody of the appellant. On opening the said packet, it was found that ganja weighing about 1.5 Kilogram was kept inside the packet. In which, about 50 grams were taken separately by P.W.2 for chemical examination.

3. At 06.15 pm, the contraband and samples were recovered in the presence of above two Head Constables and in the presence of P.W.1. For which, he prepared a Recovery Mahazar under Ex.P.3. After recovering the contraband, he arrested the 1st accused/appellant and the same was intimated to one Sivakami through telegram. Thereafter, a case has been registered in Cr.No.378 of 2004 under Sections 8(c) r/w 20(b) of NDPS Act. Ex.P.7 is the copy of F.I.R. Further, through Form No.95, contraband materials and the sample packets are sent to the Court. Finally, he made requisition to the Special Judge for sending the sample packets for chemical examination.

4. P.W.3, C.Arulanandam, Assistant Director, Forensic Science Department, Chennai, on 19.05.2004 received the sample packets through one Head Constable Pandiyan. On examination, he found out that the contraband are ganja, for which, he issued a chemical report under Ex.P.10 and the same was sent to the Court. P.W.4 Angusamy, the Inspector of Police, investigated the P.W.1, P.W.2 and one Kamalakannan and laid the charge sheet on 16.08.2004 under Sections 8(c) r/w 20(b) (ii) (B) of NDPS Act, the same was taken on the file of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, in C.C.No.53 of 2005.

5. The learned Principal Special Judge, after concluding the trial, came to the conclusion that the appellant/1st accused is found guilty of the offence punishable under Sections 8(c)

r/w. 20(b)(ii)(B) of NDPS Act and sentenced him to undergo 3 years rigorous imprisonment with fine of Rs.20,000/- (Twenty Thousand Only) in default to undergo 3 months rigorous imprisonment.

6. Challenging the said judgment, the present appeal has been filed by the appellant/1st accused.

7. The learned counsel for the appellant/1st accused contended that recovering the contraband from the appellant has not been proved through the prosecution witnesses cogently and conveniently. Further, he added, the evidence given by P.W.2 is not in accordance with Section 50 of NDPS Act, thereby, in support of his contention he placed relevance on the Judgment reported in 2014 CRI. L. J. 1756 State of Rajasthan Vs. Parmanand & Anr. As per Section 50 of NDPS Act, the accused must be individually informed that he has a right to be searched before a nearest Gazetted Officer or before a nearest Magistrate, common notice given on which co-accused have signed for himself and for accused, accused did not sign. Whereas, in this case, joint information under Ex.P.2 was given to both the accused, which violates the mandatory provisions of Section 50 of the NDPS Act. Further he deposed that during the cross examination of P.W.1, he categorically mentioned that the Head Constable Pandiyan, is alleged to be the writer of the mahazar and he is not accompanied with the P.W's.1 and 3, and he was not even cited as a witness and examined before the Court. Therefore, it is fatal to the case of the prosecution. Since the appellant/1st accused involved in some other cases, in order to show the statistical report to the Department, prosecution side has filed a false case on the appellant/1st accused. Therefore, the benefit of doubt should be extended to the appellant/1st accused against the Judgment of conviction passed by the Principal Special Judge, Special Court under EC&NDPS Act, Chennai, and made in C.C.No.53 of 2005 and it is liable to be set aside.

8. The learned Government Advocate (Criminal Side) would submit that the mandatory provisions of the Section 50 of the NDPS Act has not been violated. Since the Ex.P.2 shows that the language used in the search notice is in plural, both the accused were informed about the rights of the search on them and they signed it. Further, P.W.1 stated that he and P.W.2 Ponnuthurai and one Kamalakannan, went to the scene of occurrence based on the information from the informant. He clearly mentioned the names of the persons who accompanied with him, more particularly who stood as witnesses for this case. Hence, non mentioning of the name of one Pandiyan does not affect the prosecution side. Further, the appellant/1st accused is an habitual offender and he has been involved in five more

cases. If the appellant is convicted, he will commit the same offence. Moreover, the trial Court has gone deeply into the entire evidences and the materials. Since the trial Court rightly appreciated the entire evidence and convicted the appellant. Hence there is no interference is required by this Court on the Judgment passed by the Principal Special Judge, Special Court under EC&NDPS Act, Chennai, and made in C.C.No.53 of 2005. Therefore, the present Criminal Appeal may be dismissed.

9. Heard the learned counsel for the appellant and learned Government Advocate (Criminal side) appearing for the respondent and perused the materials available on record.

10. The case of the prosecution is that on 10.04.2004, P.W.1 P.V.Naveen, received a call from the informant. After recording the information, in writing, he placed the information before the P.W.4 Angusamy, Inspector of Police, for his approval. After getting approval from P.W.4, P.W.1 P.V.Naveen, went to the scene of occurrence along with P.W.2 Ponnuthurai and one Kamalakannan. At that time, the appellant/1st accused came with white colour polythene cover. After verifying address and other particulars of the appellant, P.W.1, informed to him about the right provided under Section 50 of NDPS Act, to appellant for choosing mode of search either in the presence of Gazetted Officer or in the presence of Judicial Magistrate, for which, the appellant replied that there is no necessity for conducting search either in the presence of Gazetted Officer or in the presence of Judicial Magistrate, thereby, P.W.1 requested one Annamalai and Gurusamy, who are the platform vendors for standing as witnesses. But, they refused to stand as witnesses. So, without any alternative in the presence of P.W.2 Ponnuthurai and one Kamalakannan, who are working as Head Constables in Police Department stood as witnesses, P.W.2 issued a search notice to the appellant under Ex.P.2. P.W.2 made search on the appellant and took the white colour polythene packet from the custody of the appellant. On opening the said packet, it was found that ganja weighing about 1.5 Kilogram was kept inside the packet. In which sample about 50 grams were taken separately by P.W.2 for chemical examination.

11. At 06.15 pm, the contraband and samples were recovered in the presence of above two Head Constables and in the presence of P.W.1. After recovering the contraband, he arrested the 1st accused/appellant and the same was intimated to his relative one Sivakami through telegram. Thereafter, a case has been registered in Cr.No.378 of 2004 under Sections 8(c) r/w 20 (b) of NDPS Act. Ex.P.7 is the copy of F.I.R. Further, through Form No.95, contraband materials and the sample packets are sent to the Court. Finally, he made requisition to the Special Judge

for sending the sample packets for chemical examination.

12. P.W.3, C.Arulanandam, Assistant Director, Forensic Science Department, Chennai, on 19.05.2004 received the sample packets through one Head Constable Pandiyan. On examination, he found out that the contraband is ganja, for which, he issued a chemical analysis report and the same was sent to the Court. P.W.4 Angusamy, the Inspector of Police, examined P.W.1, P.W.2 and one Kamalakannan and laid the charge sheet.

13. In this case, recovery of contraband was proved by prosecution through the evidence of P.W.1, P.W.2 and through Ex.P.3 a cover of mahazar. On going through Ex.P.3, two persons had attested as witnesses to the recovery magazar, in which, the P.W.2 only examined as witness in the trial Court. As contended by the learned counsel for the appellant, one Pandiyan has not been examined by the trial Court. But as per the evidence of P.W.1, the Head Constable Pandiyan was not accompanied with P.W.1. So non-examination of Pandiyan is not fatal to the case of the prosecution. On a perusal of the Ex.P.2, it clearly shows that the appellant/1st accused has very well understood about the search notice and he signed in it. So it does not affect the case of the prosecution. Therefore, mere giving search notice in common does not affect the rights of the appellant/1st accused. Ex.P.10 report proved that the recovered contraband is ganja. There is no violation of mandatory provisions of the NDPS Act. Under these circumstances, this Court does not find any reasons to interfere with the judgment of the trial Court. The learned Principal Special Judge, Special Court under EC&NDPS Act, Chennai, has rightly appreciated the evidence and convicted the appellant/1st accused.

14. Therefore, this Court is not inclined to interfere with the judgment passed by the Principal Special Judge, Special Court under EC&NDPS Act, Chennai, in C.C.No.53 of 2005 dated 22.10.2013. Hence the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Special Judge
Special Court under EC&NDPS Act
Chennai.
2. The Public Prosecutor
Madras High Court.
3. The Superintendent,
Central Prison,
Puzhal, Chennai
4. The Inspector of Police,
K6, T.P Chatram Police Station,
Chennai.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.T.S.Srinivasan, Advocate SR.No.60476

Criminal Appeal No.12 of 2014

PM(CO)
GMY(12/09/2019)



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