

Bail Slip

The Appellant/Accused namely Vijaya W/O R.Muthuvel was directed to be released on bail by the order of this Hon'ble Court in M.P.No.1/2013 in Crl.A.No.643 of 2013 dated 03/10/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.643 of 2013

M.Vijaya ...Appellant/Accused
Vs.

State rep. by:
The Inspector of Police,
NIB CID, Chennai - 39

...Respondent/ComplainantCr.No.115 of 2004)

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment of conviction dated 29.08.2013 made in C.C.No.40 of 2005 by the learned Principal Special Judge for EC & NDPS Act, Chennai.

For Appellant : Mr.S.Ambigapathi

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

Judgment

This criminal appeal has been filed against the judgment of conviction dated 29.08.2013 made in C.C.No.40 of 2005 by the learned Principal Special Judge for EC & NDPS Act, Chennai.

2 Case of the prosecution is that while P.W.1, the Head Constable, NIB CID, Chennai, was on duty, had received information about the illicit sale of Ganja by the accused. Immediately, P.W.1 had reduced the same into writing and submitted before his immediate higher officer, P.W.4/the Sub Inspector of Police and obtained permission to proceed further. Thereafter P.W.1 proceeded with his team, consisting 3 Head Constables and one women police, to the place of occurrence and identified the accused through informer. The accused came with

white color polythene bag, which had been kept in her hip. The accused was informed about her right to be searched either before the Gazetted Officer or before the Magistrate and enlightened about Section 50(1) of the NDPS Act, through Ex.P2 Notice, wherein the appellant/accused signed and refused to accept the offer by stating that the Head Constable/P.W.1 himself can made search and hence P.W.3/Usha Rani had made search on the accused. Thereafter, P.W.1 called some of the persons, who were available at the place to stand as witness, since they had refused to stand as witness for the search to be made, P.W.3 searched the accused before two witnesses, who were accompanied with him and recovered contrabands i.e. 5 Kgs of Ganja, which had been kept in her hip at white color polythene bag.

3 P.W.1 had taken out samples M.O.1 & M.O.2 50 grams each and M.O.3 bulk Ganja, packed in brown cover, tied and sealed and obtained signatures of the accused and witnesses. Thereafter, prepared Mahazar Ex.P3 and issued arrest memo Ex.P4 and after coming to the Police Station, P.W.1 had prepared FIR/Ex.P6 and Ex.P8 Form 95 and entrusted all the above to the P.W.4, the Sub Inspector of Police. P.W.4, the Sub Inspector of Police after receiving Ex.P9/Report from P.W.1 under Section 57, since the accused in possession of 5 Kgs of contraband, had registered a case in Crime No.115 of 2004 against the appellant/accused under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and the same was forwarded to the learned Magistrate and thereafter transferred to the learned Principal Judge, Special Court under NDPS Act, Chennai, which was taken on file in C.C.No.125 of 2007.

4 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W4 were examined and documents Ex.P1 to Ex.P12 were marked along with Material Objects 1 to 3. On the side of the defence, no one was examined no document was marked.

5 The learned Special Judge, after trial, found the appellant/accused guilty of offence under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985, and by judgment dated 29.08.2013, convicted her and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for a further period of three months.

6 Aggrieved against the judgment of conviction dated 29.08.2013, the convict had preferred this present criminal appeal before this Court.

7 The learned counsel for the appellant/accused would submit that the appellant was not informed about the right to be

searched either before the Gazetted Officer or Magistrate and the respondent police only obtained thumb impression of the accused in the Ex.P2 Notice and hence mandatory provision of Section 50 of NDPS Act was not complied with. The accused was not searched either before the Magistrate or Gazetted Officer and recovery was not made before any independent witnesses. Even though the place of occurrence is very busy place and there were many shops and public movements were available, the prosecution had failed to examine any independent witness. Further the learned counsel for the appellant would contend that there are many contradictions in the evidences of prosecution witnesses regarding time and place of occurrence. The contradictions made by the prosecution, would clearly show that the present case is concocted one and there is no vital evidence to convict the appellant/accused.

8 The learned counsel further submitted that there was 20 days delay in submitting the recovered contraband before the Court, which was not properly explained by the prosecution. At the time of receiving information, P.W.3 was also present in the Police Station, but, in cross examination, she had stated that she was not aware of the fact. There is no previous case against the appellant/accused. Furthermore, the prosecution alleged that the accused kept the contraband in her hip, it is not possible for anyone to keep 5 Kgs at hip, which creates doubt. The 5 Kgs of contraband is not a commercial quantity and it is only in between quantity. The learned Principal Judge had failed to consider the above facts and erroneously convicted the appellant. Hence the appellant/accused is entitled for acquittal and he prayed atleast to minimise the sentence imposed on her by the trial Court, since the appellant is being a woman.

9 The learned Government Advocate (Crl.Side) would submit The Investigating Officer, soon after receiving the secret information at 10.00 a.m. about the illicit sale of ganja by the appellant/accused, reduced the same into writing and obtained necessary permission from his immediate superior and proceeded to the place of occurrence. He identified the accused and duly informed to the accused/appellant about the right to be searched either before the Gazetted Officer or before the Magistrate and issued Notice/Ex.P2 under Section 50(1) of the NDPS Act, and obtained signature, thereby the mandatory provision has been duly complied with. After completing legal formalities, since no one had come forward to stand as witness, the team members, who accompanied with P.W.1, had stood as witness for the search and recovery mahazar and recovered 5 Kgs of Ganja from the accused and took the appellant to the Police Station. P.W.4, after registering case in Crime No.115 of 2004 and preparation of Form 95/Ex.P8, had forwarded the same to the Magistrate, which contains list of properties and after completing legal

formalities, all the above had been taken to the I Additional Special Judge for NDPS Act, Chennai. After completing investigation, the respondent filed a final report before the special Judge which was taken on file. The Chemical Analyser, who examined as P.W.2, had given a report Ex.P11, which reveals that the contraband seized from the accused is Ganja, which is prohibited. Since the appellant/accused was in conscious possession of the contraband, she had committed offence punishable under Sections 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985. P.W.1 and P.W.3 had categorically deposed and they had also spoken about the compliance of the mandatory provisions of the NDPS Act. P.W.3 had corroborated the evidence of P.W.1/Seizure Officer. Further, minor contradictions as stated by the learned counsel for the appellant/accused, will not go to root of the case. Hence, the trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant, which does not warrants any interference of this Court.

10 Heard the rival submissions made by the learned counsel appearing on either side and perused the original records.

11 On a perusal of the evidences of P.W.1 to P.W.4, it reveal that there is no much contradictions as stated by the learned counsel for appellant/accused. The minor contradictions stated by the learned counsel for the appellant/accused, will not vitiate entire case of prosecution. The prosecution had clearly proved possession and recovery of contraband, through evidence of P.W.1, which had been corroborated by P.W.3 and P.W.4. Further the accused was duly informed about his right to be searched either before the Gazetted Officer or before the Magistrate and the appellant understood and stated that the P.W.1 himself can search and she need not brought either before the Gazetted officer or Magistrate for conducting search. Ex.P2 notice under Section 50 of the NDPS Act was issued on her and the accused also affixed her thumb impression on the same. It is also contended by the learned counsel for the appellant that prosecution had failed to examine any independent witness. Normally, general public would have strong hesitation to stand as witness for the cases of this nature under NDPS Act, and they have a general opinion that, if they stand as witness, they have to run from pillar to post for the purpose of giving evidence, etc., and hence non-examination of independent witness is not fatal to the case of the prosecution, since causes for the same had been clearly explained by the prosecution.

12 In the present case, from the documents available, it is very clear that mandatory provisions of Section 50 of the NDPS Act had been duly complied with and there was no violation at all. The trial Court gone into all these aspects and found

the accused guilty. From the documentary evidences and the judgment of conviction made by the Court below, this Court, as a first appellate Court, after re-appreciating entire materials, found the accused guilty of offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985. There is no valid ground to take a different view in the matter. Further, even though, the learned counsel for the appellant has prayed to minimise the sentence, this Court, considering the nature of the offence and quantum of contraband, seized from the accused, is not inclined to reduce the sentence, since the trial Court had already awarded a lesser punishment of two years.

13 In the result, the criminal appeal stands dismissed, judgment of conviction 29.08.2013 made in C.C.No.40 of 2005 by the learned Principal Special Judge for EC & NDPS Act, Chennai, is hereby confirmed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge for EC & NDPS Act,
Chennai.
- 2.The Superintendent,
Central Prison, Puzhal, Chennai.
- 3.The Inspector of Police,
NIBCID,, Chennai-39.
- 4.The Director General of Police,
Mylapore, Chennai-4.
- 5.The District Collector, Chennai.
6. The Public Prosecutor, High Court of Madras.

Copy to

The Section Officer, Criminal Section, High Court, Madras-104.

Cr1.A.No.643 of 2013

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srg 18/03/2019