

Bail Slip

The Appellant herein/Accused viz M.Ravi, S/o.Siva, was directed to be released on bail as per the order of this court dated 12.05.2011 made in Mp.1/2011 in Cr1.A.295/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2018

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Cr1.A.No.295 of 2011

Ravi

..Appellant/Accused

vs

Inspector of Police,
NIB CID,
Chennai
(Crime No.143 of 2004)

..Respondent/Complainant

Prayer: Appeal filed under Section 374 (2) Cr.P.C., challenging the Judgment of conviction and sentence dated 20.04.2011 in C.C.No.133 of 2005 by the learned Principal Special Judge for NDPS Act, Chennai.

For Appellant : S.Ranjith Kumar
Legal Aid Counsel

For Respondent : Mr.G.Ramar
Government Advocate (Cr1.Side)

JUDGMENT

The sole accused in C.C.No.133 of 2005 on the file of the learned Principal Special Judge for NDPS Act, Chennai is the appellant herein. He stood charged for the offence under Section 8(c) read with Section 20(b)(ii)(b) of N.D.P.S Act, 1985 as amended by Act, 9/01. After full fledged trial by the judgement dated 20.04.2001, the trial court convicted him under Section 8 (c) read with 20(b)(ii)(b) of NDPS Act and sentenced to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo 2 months Rigorous Imprisonment. Aggrieved by the conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:

(i) On 28.11.2004 at about 11.00 hrs, PW2 (Subramanian), the then Head Constable NIB CID, Chennai, received information about the indulgence of the illicit sale of ganja by the appellant, he recorded the said information and submitted before PW4 Murugaiyan, who is the Sub-Inspector of Police, NIB CID for getting permission to initiate action. After getting permission from PW4 at about 11.15 hours on the same day along with Gr.1 constable Gopal and one Aanaimalai, he went over to the scene of occurrence. At about 12.15 hours, the informer identified the accused to the PW2 and thereafter, PW2 introduced himself to the accused as he is a Head Constable attached with NDPS Police. He informed to the appellant that he wanted to made a search on him. Further, he informed to the accused about the rights available to him in asking the presence of Magistrate or the Gazetted Officer during the time of search, for that, the accused told to P.W.2 that the presence of Judicial Magistrate or any Gazetted Officer is not necessary for conducting search. So, in order to made a search, search notice was issued to the Accused under Ex.P.4, the information given to the accused with regard to the right available to him and the reply given by him was recorded under Ex.P3.

(ii). Thereafter, PW2 requested one Mahalingam and Ganesh for standing as a witness to search. Since, both of them were refused to stand as witness to the search, in the presence of Gopal and Aanaimalai, who are the Gr I constables, further they are the part of the team members, PW2 conducted search on the accused and found that the accused is possessed with dry ganja in a white colour polythene bag. Immediately, P.W.2 weighed the same with the help of weighing machine which was brought with them and found that the ganja possessed by the accused weighs about 1.500 kgs.

(iii). From the above total contraband, PW2, took two 50 grams of ganja and put the same in two separate polythene covers, consequentially, kept the same in a brown cover. Thereafter, tied with thread and sealed with NIB seal. Further, he labelled with details after duly signed by the accused, witnesses and by himself. The balance contraband sent to NIB in the same manner. For the recovery of contraband material, PW2 prepared the seizure mahazar under Ex.P5. Since the accused has no valid permit or licence to possess the above said contraband material, after informing the grounds of arrest, P.W.2 arrested the accused after the preparation of Arrest memo under Ex.P.7. After serving the copy of arrest memo, P.W.2 took the accused to the Police Station along with the contraband material.

(iv). On the same day at about 14 hours, a case has been registered against the accused in Cr.No.143 of 2004 under Section 8(c) read with 20(b)(ii)(b) NDPS Act. Ex.P8 is the copy

of the FIR. Further, through the telegram, P.W.2 sent an intimation to the wife of the appellant about the arrest of appellant. Particulars of the properties which have been recovered are entered in Form.95 (Ex.P.10). Further, he produced the accused along with properties and relevant records before the P.W.4 through the Special Report. Thereafter, the samples are sent to the Court in turn sent it for chemical examination, one of the sample which was not sent for chemical analysis is marked as M.O.2. The contraband material was marked as M.O.3. On Chemical examination, it was found that the contraband materials found in the sample packets are ganja. So, PW2 filed a final report against the accused for the offence under Section 8(c) read with 20(b)(ii)(b) of NDPS Act.

(v). In the Trial Court, after the appearance of accused, the copies of the documents relied on by the prosecution were furnished and after giving sufficient time. Based on the materials available, the trial court has framed the charges as detailed in the first paragraph of this judgment. The accused denied the same. So the accused put on trial, in order to prove the case, on the side of the prosecution, as many as 5 witnesses were examined as P.W.1 to P.W.5 and 14 documents were marked as P1 to P14, besides, M.O.1 to M.O.3.

3. Out of the said witnesses, PW1 Devasenai is the then Chemical Examiner, Forensic Department, Chennai, he has stated in the trial court as on 20.12.2004 through letter dated 20.12.2004 (Ex.P.1), she received samples for chemical examination. She has further stated on examination, it was found that the contents of the sample packet are cannabis, for that, she issued a chemical analysis report under Ex.P.2.

4. P.W.2 Mr. Subramanian, the then Head Constable, NDPS, Chennai depose that on 20.08.2011 when he was on duty at about 11.00 hours, received the information as between 12.15 to 2.00 hrs, the present appellant has come to the Harbour for selling the ganja. He has further stated that the said information was recorded by him and placed before the P.W.4 for further action. After getting approval from the Inspector of Police (P.W.4), at about 11.15 a.m. Along with Grade-I Constable Gopal, he went over to the occurrence place. He has stated in the occurrence place the informant identified the accused to him and thereafter, he secured the accused and enquired about the name and address of the accused, on enquiry he found that he is the correct person mentioned by the informant, so after securing him, he informed to the accused about the rights available to him in asking the presence of Judicial Magistrate or Gazetted Officer for searching him. He has further stated that the option given to the accused and reply given by accused are recorded, in which, he obtained signature from the accused. Ex.P.3 is the option letter and the reply given by the accused.

After getting the reply from the accused, he issued a search notice to the accused under Ex.P.4.

5. After the preparation of Ex.P.3 and Ex.P.4, he requested one Mahalingam and Ganesan who are the public standing near to the occurrence place for standing as a witness to the search made on the accused, for which, both of them refused to stand as a witness. Since the independent witnesses are refused to stand as a witness, in the presence of Gopal and Annamalai who are the Gr-I constables, he made a search on the accused and found that the accused was possessed with 1.5 kg of ganja. From the total contraband material, P.W.2 took two 50 grams of ganja and packed by using the brown cover for the purpose of chemical examination. He recovered contraband through a seizure mahazar (Ex.P.5). Thereafter, he issued a arrest memo to the accused under Ex.P.6. Thereafter, along with the contraband material, he returned to the Police Station and registered the case in Crime No.143 of 2004 under Section 8(c) read with 20(b)(2) (b) of NDPS Act. Further the particulars of arrest was intimated to the wife of the accused. He has further stated that the particulars of contraband material was entered in Form.95 and handed over to Court.

6. P.W.3 is the Head Constable, Udumalai Police Station has stated that on 28.11.2004 at about 11 a.m., he went to the occurrence place along with P.W.2. Further, he stated about the arrest of the accused, about the search made on him, and about the recovery of contraband as stated by P.W.2.

7. P.W.4, the then Sub-Inspector of Police, NDPS has stated on the day of occurrence after registering the case pertaining to this occurrence in Cr.No.143 of 2004 P.W.2 hand over the accused to him along with FIR for investigation. He has further stated, after recording the statements from the witnesses, he handed over the case records to P.W.5 for further investigation.

8. P.W.5 Ashok Kumar, the then Inspector of Police, NDPS has stated after receiving the case records, he perused the documents and after the receipt of chemical examination report, he filed the final report in this case.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false, however, he did not choose to examine any witnesses nor did he mark any documents on his side. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment. Challenging the above said conviction and sentence, the appellant is before this Court with the present criminal appeal.

10. Today when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.S.Ranjith Kumar, learned

counsel appearing for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) appearing for the respondent and also perused the records carefully.

11. The learned counsel appearing for the appellant would submit that the appellant is an innocent person, he had not committed any offence as alleged by the prosecution. With regard to the reaching of occurrence place, the Police officers who were examined as PW2 and PW3 were deposed the different evidences in the Trial Court. It shows that the alleged search had not been completed in the occurrence place as stated by PW2. Accordingly, he prayed to allow this appeal and for setting aside the conviction.

12. In this regard, as per the case of prosecution, PW2 made arrangements for conducting the search, he only completed the entire process with regard to the recovery of contraband materials. However he specifically stated in his cross examination as he and other two Grade I Constables are went to the occurrence place through the Auto, except this, he had not stated anything about the Registration No. of the Auto and about the name of the driver and other things.

13. In the said situation, it is normal that the mental efforts of the human being cannot be able to absorb the other details of the the incident. But, in the Trial Court when at the time of giving evidence, PW3, Gopal who is the person accompanying with PW2, further, he is the witness attested in the recovery mahazar has stated in his cross examination that they were all reached the place of occurrence by using the Government vehicle. Accordingly, the evidence given by PW2 and PW3 with regard to the vehicle used for reaching the occurrence place creates a suspicious circumstances over the case of prosecution.

14. Further, PW3 has stated in his evidence as search notice issued to the accused was prepared in Police Station itself. In the said circumstances, if really, the search notice is prepared in the Police Station, it is impossible to serve the same to the appellant in the scene of occurrence. So, the said contradiction has also shaken the case of prosecution.

15. Furthermore, PW2 stated in his evidence, that in the search notice, he obtained the thumb impression from the appellant.

16. Now, on going through the said document, now stated by PW2, there is no thumb impression is obtained from the appellant, the said aspect also creates a doubt, whether the search notice is served to the appellant as stated by the PW2 or not.

17. Accordingly, I hold the said contradictions is nothing but a fatal to prosecution. Since the arrest itself is a doubtful one, the factum of recovery of contraband also goes away. It is the duty of the prosecution to prove his case beyond reasonable doubt. But in this case, the prosecution fails in its attempt to prove the case beyond reasonable doubt.

18. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed upon the appellant in C.C.No.133 of 2005 dated 20.04.2011 by the learned Principal Special Judge for NDPS Act, Chennai is set aside and the appellant/accused are acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

19. While parting with the case, I appreciate the services rendered by Mr.S.Ranjith Kumar, learned counsel who appeared on behalf of the appellant, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msv

1. The learned Principal Special Judge for NDPS Act, Chennai.
2. Inspector of Police, सत्यमेव जयते
NIB CID,
Chennai.
(Crime No.143 of 2004)
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal Chennai.

5.The Secretary,
Legal Services Authority,
Chennai.

Cr1.A.No.295 of 2011

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