

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.11..2016
Pronounced on : 23.03..2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.276 of 2012

Vettri @ Vettriselvan ... Appellant/Accused

-Versus-

State Rep. by
Inspector of Police,
K.6, T.P. Chatram Police Station,
Chennai. ... Respondent/Complainant

Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and sentence made in Calendar Case No.99 of 2005 dated 11.04.2012 by the learned Principal Special Judge for NDPS Act Cases (Principal Special Court), Chennai-600 104.

For Appellant : Mr.R.C. Paul Kanagaraj

For Respondent : Mr.R. Ravichandran,
Government Advocate.

JUDGEMENT

The sole accused in Calendar Case No.99 of 2005 on the file of the learned Principal Special Judge for NDPS Act Cases, Principal Special Court, Chennai, is the appellant herein. He stood charged for the offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act. When the appellant was questioned as to the charge, he pleaded not guilty and therefore, he was put on trial. The learned Principal Special Judge for NDPS Act Cases, after full-fledged trial, found the appellant guilty of offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. The appellant was accordingly convicted and sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs.25,000/- in default to undergo rigorous imprisonment for a period of six months for the offence under Section 8(c) r/w 21(c) of the NDPS Act. Challenging the above said judgment of conviction and sentence, the accused is before this court with this criminal appeal.

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

On 21.11.2004, while P.W.1/Tr.Murugan/Sub-Inspector of Police was on duty at T.P.Chathiram Police Station, he had received a

source information at 9 a.m., over phone that one person was selling Ganja in the nearby area at 21 Cross Street, T.P.Chathiram Main Road, if he would come to that place immediately, he can identify the accused. P.W.1 reduced the same (Ex.P.1) in writing and placed before P.W.4/Inspector of Police, T.P.Chathiram police station. After obtaining directions from P.W.4/Inspector of Police, he proceeded to the scene of occurrence at 10 a.m., along with one Raji/Police Constable and P.W.2/Tr.Mahindra Singh/Police Constable when they reached the spot, the informer identified a person who was standing with polythene cover in a suspicious manner. P.W.1/Sub-Inspector of Police interrogated the suspected person about the name and address. The name and address obtained from the appellant and the name and address already obtained from the informer are one and the same. Then, P.W.1/Sub-Inspector of Police explained the mandatory provision, to be searched before the Judicial Magistrate or a Gazetted Officer and the appellant given his consent to conduct search by P.W.1/Sub-Inspector of Police. No private witness has come forward to endorse the search. Hence, P.W.1/Sub-Inspector of Police has prepared Ex.P.2/search memo in the presence of Raji/Police and P.W.2/Mahindra Singh in which P.W.1 & 2 and appellant had signed and Ex.P.2/search memo was issued to the appellant. When a polythene cover was opened by P.W.1, it contains Ganja, then it was weighed as 1350Kgms. P.W.1 took two samples of weighing 50 grams each from the Ganja were packed and labeled and the samples were marked as S1 & S2. The remaining ganja 1250Kgms was also packed and labeled and marked as P.1. P.W.1 obtained the signature of the witnesses and accused and signed both the labels. At about 11 a.m., P.W.1 has seized all the above material objects under a recovery mahazar/Ex.P.3. The chemical analyst report of the samples S1 & S2 were marked as M.O.1 & M.O.2. The remaining ganja was marked as M.O.3. The appellant was not having valid license for selling ganja. P.W.1 has prepared Ex.P.4/arrest memo which was served to the appellant. P.W.1/Sub-Inspector of Police has confirmed that the appellant is not sustained any injuries and after that, he also prepared Ex.P.5/inspection memo in which P.W.1 obtained the signatures of the witnesses and appellant and affixed his signature. Then, P.W.1 returned back to the police station along with appellant, material objects and documents and a case was registered against the appellant in Crime No.941 of 2004 of K6, T.P.Chathiram police station under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act. The said FIR was marked as Ex.P.6. P.W.1 has also prepared a special report under Section 57 NDPS Act and the same is marked as Ex.P.7. Further, P.W.1, handed over the properties under Form-95/Ex.P.8 to P.W.4/Inspector of Police for further investigation. The arrest of the appellant was informed to his relatives under Ex.P.9/arrest memo. P.W.2 corroborated the evidence of P.W.1.

3. During the relevant point of time, P.W.4/Tr.Angusamy was working as Inspector of Police AT k6, T.P.Chathiram police station. On 21.11.2004, he accorded sanction to prosecute against the appellant. He sent Ex.P.12/requisition letter to the Court for chemical examination. P.W.3/Tr.Shanmugam was the then Assistant Chemical Examiner in Forensic Science Laboratory at Chennai. According to P.W.3, during the chemical test, it revealed that the samples of ganja contains the chemical element of Cannabinoid. Ex.P.11 is the chemical analysis report dated 23.02.2005. Ex.P.12 is the requisition letter received from the Court. P.W.4 examined P.W.3/chemical examiner and recorded his statement. After completing the investigation, a charge sheet was filed against the appellant under Section 8(c) r/w 20(b)(ii) (B) of NDPS Act.

4. The accused was produced before the trial court and the substance of the offences were explained and charges were framed. The appellant denied the charges and opted for trial. Thus, he was put on trial.

5. Based on the materials collected during the course of investigation, the prosecuting agency has examined as many as 4 witnesses as P.W.1 to P.W.4, Exs.P.1 to P.12 documents and M.Os.1 to 3 were marked.

6. Out of the above said witnesses, P.W.1 was the Sub-Inspector of Police at T.P.Chathiram Police station, during the relevant point of time. He has stated that on 21.11.2004, while he was on duty, he received a phone call from informer who informed that the appellant was selling ganja at 21- Cross Street, T.P.Chathiram Main Road and further informed that, if rushed to the scene of occurrence, he can identify the appellant. P.W.1/Sub-Inspector of Police recorded the source information/Ex.P.1 and placed before P.W.4/Inspector of Police and obtained permission from P.W.4/Inspector of Police, P.T.Chathiram Police station to proceed further. P.W.1/Sub-Inspector of Police proceeded to the scene of occurrence at 10 a.m., along with official witnesses of Raji/Head Constable and P.W.2/Tr.Mahindra Singh/Police. The informer identified one person who was standing with polythene cover in a suspicious manner. P.W.1/Sub-Inspector of Police interrogated the suspected person about the name and address. The name and address obtained from the appellant and the name and address already given by the informer were one and the same. Then, P.W.1/Sub-Inspector of Police explained to the appellant about the mandatory provision, to be searched before the Judicial Magistrate or a Gazetted Officer and the appellant given his consent to conduct search by P.W.1/Sub-Inspector of Police himself. No private witness has come forward to endorse the search. Hence, P.W.1/Sub-Inspector of Police has prepared Ex.P.2/search memo in the presence of Raji/Police Constable and P.W.2/Mahindra Singh/Police Constable in which P.W.1 & 2, Raji/Police and appellant have signed and Ex.P.2/Search memo was issued to the appellant. When a

polythene cover was opened by P.W.1, it contains Ganja, weighing about 1350Kgms. P.W.1 took two samples of 50 grams each from the Ganja the same was packed and labeled and the samples were marked as S1 & S2. The remaining ganja 1250Kgms was also packed and labeled and marked as P.1. P.W.1 obtained the signature of the witnesses and appellant and signed in both the labels. At about 11 a.m., P.W.1 has seized all the above material objects under a recovery mahazar/Ex.P.3. The chemical analyst report of the samples S1 & S2 were marked as M.O.1 & 2. The remaining ganja was marked as M.O.3. Then, P.W.1 prepared Ex.P.4/arrest memo which was served to the appellant and also confirmed that the appellant has not sustained any injuries and P.W.1 prepared Ex.P.5/inspection memo in which P.W.1 obtained the signatures of the witnesses, appellant and affixed his signature. P.W.1 registered a case in Crime No.941 of 2004 at K6, T.P.Chathiram police station under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act against the appellant. The said FIR was marked as Ex.P.6. He has also prepared Ex.P.7/special report under Section 57 NDPS Act. He has also handed over the properties under Form-95/Ex.P.8 to the Inspector of Police for further investigation. The arrest of the appellant was informed to his relatives under Ex.P.9/arrest memo. P.W.2/Mahindra Singh/Police Constable corroborated the evidence of P.W.1/Sub-Inspector of Police.

7. All the incriminating material evidence produced during the course of trial were put before the appellant, the appellant, in general, denied all the evidence as false. However, he did not choose to examine any witness and marked any document on his side.

8. Having considered all the above, the learned trial judge convicted the appellant for the offence under Section 8 (c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to imprisonment besides fine as stated in the first paragraph of this judgment. Challenging the conviction and sentence, the appellant is before this court with the present criminal appeal.

9. Heard the learned counsel appearing for the appellant and the learned Special Prosecutor appearing for the respondent and also perused the available records.

10. The learned counsel for the appellant would submit that the non procuring of independent witness is fatal to the case of prosecution. He further submitted that the property was seized by P.W.1 on 21.11.2004, but, the same was produced before the trial Court only on 16.12.2004 with a delay of 25 days and there is no proper explanation on behalf of the prosecution for the delay of 25 days.

11. Per contra, the learned Government Advocate vehemently opposed the criminal appeal and contended that the seized ganja weighed 1.350Kgms from the appellant is a

commercial quantity and the same was proved by chemical analysis report is that of ganja. He further contended that the appellant is a habitual offender and number of cases are pending against the appellant in various Courts. Thus, the prosecution has proved its initial burden and the learned trial Judge after analysing the material documents rightly concluded with the culpable mental state of the appellant, that he was with conscious possession of such quantity of ganja which had been packed in a polythene cover. According to him, once the possession and recovery of contraband has been proved, then, the onus shifts on the appellant to discharge his burden that he was not in conscious possession of the contraband. In the instant case, the appellant was not able to discharge the onus of proof that he was not in conscious possession and therefore, in view of the provision under Sections 35 & 54 of the NDPS Act, the trial court rightly invoked the presumption and found that the appellant was guilty and imposed the Judgment of conviction and sentence.

12. On a perusal of the entire material records, it reveals that, based on the source information and identification of the informer, P.W.1 interrogated the appellant and complied the statutory formalities. P.W.1, served search notice on the appellant in the presence of police officials. Then, observation mahazar was also prepared by P.W.1 and recovery also made in the presence of official witnesses. The Inspector of Police has given the reason as to why the appellant was not searched, recovered the contraband and arrested the accused in the presence of independent witnesses. P.W.1/Sub-Inspector of Police, arrested the accused and also intimated to the relatives of accused and a case was registered against the appellant. All the samples and other remaining contrabands were seized with seizure mahazar and placed before P.W.4/Inspector of Police. After complying all the statutory formalities, the samples of the seized ganja were sent to Forensic department for analysis and report. On a perusal of Ex.P.11/Analysis report, revealed that the samples of ganja contains the chemical element of cannabinoid.

13. The appellant was holding the contraband without having any proper license. Therefore, a case was registered against the appellant under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act. Hence, onus is shifted on the appellant that he was having adequate license for handling the contraband during the course of search made by P.W.1 and he was not in conscious possession.

14. It is settled law that the testimony of official witnesses can not be rejected on the ground of non-corroboration by independent witness. In this case, prosecution, in support of its case, has examined P.W.1 & 2 who have supported the alleged recovery of ganja from the appellant. No doubt in the absence of independent witnesses, the evidence of the police witnesses must be scrutinized with

greater care. In this case, on a careful perusal of material evidence, there is no reason to discard the evidence of P.W.1 & P.W.2.

15. Further, it is settled law that mere lapses on the part of the investigating officer itself can not be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the investigating officer. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record. In so far as delay in sending the property to the trial Court is concerned, mere delay in sending property to the Court itself is not ground for rejecting the case of prosecution unless established that during that period the property was tampered. In this case, specifically there is no such evidence. P.W.3 has clearly stated that seal of the sample was intact. Therefore, the contention of the learned counsel for the appellant is not acceptable in this regard.

16. In view of the foregoing discussions, this court is of the considered view that the prosecution has proved its case beyond all reasonable doubts and that the learned Special Judge was right in holding that the appellant was guilty of charges and that this court does not find any illegality or infirmity in the judgment of conviction and sentence rendered by the trial Court.

17. In the result, this Criminal Appeal stands dismissed and the judgment of conviction and sentence dated 11.04.2012 recorded by the learned Principal Special Judge for NDPS Act Cases (Principal Special Court), Chennai-600 104, in C.C.No.99 of 2005 against the appellant is hereby confirmed.

Sd/--

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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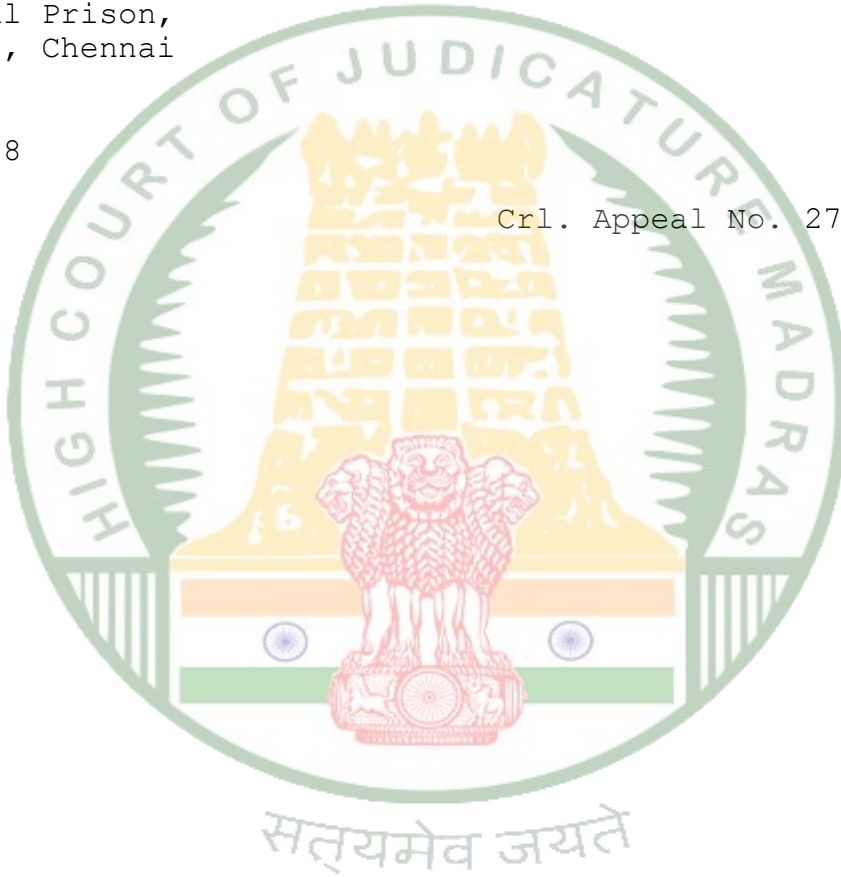
To

1. The Prl. Spl. Judge for NDPS Act Cases,
(Principal Special Court),
Chennai-600 104.

2. The Public Prosecutor
High Court, Madras.
3. The Record keeper
High Court, Madras.
4. The Inspector of Police
K-6, T.P.Chatram Police Station,
Chennai.
5. The Superintendent
Central Prison,
Puzhal, Chennai

AK(CO)
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