

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.04.2018**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.144 of 2012

Babu

.. Appellant / Accused

Vs.

State Rep. by Inspector of Police
K6, T.P.Chatram Police Station,
Chennai.

.. Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the Principal Special Court under EC & NDPS Act, Chennai and made in C.C.No.321 of 2003 by Judgment, dated 17.02.2012.

For Appellant : Mr.J.Asokan
for Mr.M.Shajahan

For Respondent : Ms.M.Prabavathi Ganesh Ram
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the accused against conviction and sentence passed by the Principal Special Court for EC & NDPS Act, Chennai, dated 17.02.2012 in C.C.No.321 of 2003.

2. The Inspector of Police, K6 T.P.Chatram Police Station charge sheeted the accused alleging that he was in possession of cannabis weighing 1 kg 100 gms at 11.30 a.m on 15.08.2002 near

Gajapathy Street, Chennai and thereby he committed offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, 1985.

3. After furnishing copies and framing of charges, the accused was put on trial as he pleaded not guilty. To prove the case of the prosecution 4 witnesses were examined, 10 Exhibits and 2 MOs marked. The accused was also questioned under Section 313(1)(b) Cr.P.C as to the incriminating evidence appeared against him and he denied his complicity with the crime. The trial Court after analysing the evidence convicted the accused and sentenced to undergo RI for 2 years and to pay a fine of Rs.25,000/-, in default to undergo RI for 6 months for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act, 1985.

4. The learned counsel for the appellant / accused raised the following grounds :

(1) The exact quantity of alleged cannabis has not been established by the prosecution.

(2) There is discrepancy as to the time of serving the check memo with reference to the time of reaching the scene of crime by P.W.1.

(3) The correction of date in Ex.P.1, Ex.P.3 and Ex.P.4 creates suspicion as to the taking of custody of the accused by the police.

5. The learned Additional Public Prosecutor inter alia argued that absolutely there is no discrepancy as alleged by the learned counsel for the appellant and after analysing the evidence the trial Court has rightly convicted the accused and the same does not require any interference.

6. This Court perused the check memo and there is no mention that check memo was issued at 10.30 a.m. In the check memo, it has been specifically mentioned that information was received at 10.30 a.m. Therefore the contention of the learned counsel for the appellant that the check memo was issued even before reaching the scene of crime by P.W.1 is not acceptable.

7. In Ex.P.1, Ex.P.3 and Ex.P.4, there is correction in the date. The date 14 is found corrected as 15. In the absence of any other acceptable material only because of the above said correction, it cannot be considered that the accused was taken by the police even on 14.08.2008. Therefore the above contention of the learned counsel for the appellant is also not acceptable.

8. The main and foremost contention of the learned counsel appearing for the appellant is with respect to the weight of the cannabis. P.W.1, the Sub-Inspector of Police has deposed that

she weighed the cannabis with the polythene cover and the weight of the contraband is about 1 kg 100 gms.

9. This Court also perused Ex.P.7, Form-95 through which the contraband was sent to the Court. In Form-95, it has been mentioned cannabis weighing 50 gms and 1.050 Kgs have been produced. But there is no endorsement of the Judicial Magistrate or the Special Judge in Form-95 as to the receipt of the same. In the absence of any endorsement of the Court, it cannot be taken that weight mentioned in Form-95 is exact weight. It is pertinent to note that even according to P.W.1, the weight of the contraband including the polythene bag is only about 1 kg 100 gms. When P.W.1 mentions the weight with prefix -about- which includes the weight of the polythene bag, this Court has no hesitation to hold that the weight of the contraband is not exactly 1 kg 100 gms and the prosecution has not established the exact weight of the contraband. Therefore the contraband seized would be 1 kg or less and only to attract the in-between quantity, the prosecution mentioned the weight of the contraband as above 1 kg.

10. With respect to other aspects as to the possession by the accused and the contraband as cannabis / Narcotic have been established through acceptable evidence. For the aforesaid reasons,

this Court holds that the prosecution has established that the accused was in possession of small quantity, i.e., 1 kg of cannabis.

11. The trial Court is not correct in finding the accused guilty for possessing in-between quantity of cannabis and this Court holds that the accused is found guilty for possession of small quantity of cannabis and therefore, he is liable to be punished under Section 8 (c) r/w 20(b)(ii)(A) of NDPS Act, 1985.

12. Considering the age of the accused, quantity of the cannabis seized and the period of sentence already undergone, this Court awards the following sentence.

"The appellant / accused is found guilty under Section 8 (c) r/w 20 (b) (ii) (A) of NDPS Act, 1985 and sentenced to undergo RI for six months and also to pay a fine of Rs.10,000/-, in default to undergo 2 months SI. The period already undergone is ordered to be set off under Section 428 Cr.P.C."

With the above modification, this Criminal Appeal is partly allowed. The trial Court is directed to refund to the appellant the excess fine amount, if any already paid

04.04.2018

Index : Yes / No

P.KALAIYARASAN, J

tsvn

To

1. The Principal Special Court under EC & NDPS Act,
Chennai
2. The Public Prosecutor
High Court of Madras.



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