

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.166 of 2012

Nagammal

.. Appellant/sole accused

Vs

State: Rep by
Inspector of Police,
NIB CID,
Chennai.
(Crime No.31/2002)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C, praying to set aside the judgment dated 24.01.2012 passed in C.C.No.247 of 2002 by the learned Principal Special Judge for NDPS Act Cases at Chennai.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.G.Raman,
Government Advocate (Crl.side)

J U D G M E N T

This appeal has been directed against the judgment dated 24.01.2012 passed in C.C.No.247 of 2002 by the learned Principal Special Judge for NDPS Act Cases at Chennai, in which, the appellant herein is the sole accused.

2.The learned Principal Special Judge, after concluding the trial, came to the conclusion that the appellant is guilty of the offence punishable under Sections 8(c) r/w. 20(b)(ii)(A) of NDPS Act and directed him to pay a fine of Rs.10,000/- in default, to undergo 3 months Rigorous Imprisonment. Challenging the said judgment, the present appeal has been filed by the appellant.

3.From the materials available on record, the case of the prosecution is follows:

(i) On 16.03.2002, P.W.2 Rangasamy, when he was working as a Inspector of Police, Special Cell received an intimation from the informant. After recording the information under Ex.P.3., at about 15.30 hours, he went to the scene of occurrence. Meanwhile, he requested the Officer in charge, Thousand Lights Police Station for appointing P.W.3, Deivanai for accompanying with him. Thereafter, along with P.W.3, at about 4.00 p.m., he went to the scene of occurrence. At that time, the appellant came with white colour polythene cover. After verifying address and other particulars of the appellant, P.W.2, informed to her 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.2 requested one Krishnan and Hariharan, who are the platform vendors for standing as witnesses. But, they refused to stand as witnesses. So, without any alternative in the presence of one Gulabudheen and one Kalyanaraman, who are working as Head Constables in Police Department, P.W.2 issued a search notice to the appellant under Ex.P.4.

(ii) Thereafter, he requested P.W.3 for searching the appellant. So, she made search on the appellant and took the white colour polythene packet from the custody of the appellant and the same was handed over to P.W.2 by P.W.3. On opening the said packet, it was found that ganja weighing about one Kilogram was kept inside the packet. So, from the total contraband, two samples weighing about 50 grams were taken separately by P.W.2 for chemical examination. Further, the total contraband and samples were recovered in the presence of above two Head Constables and in the presence of P.W.3. For which, he prepared a Recovery Mahazar under Ex.P.5. After recovering the contraband, he arrested the accused at 17.30 hours and the same was intimated to the appellant under Ex.P.6. Thereafter, a case has been registered in Cr.No.31 of 2002 under Sections 8(c) r/w 20(b) (i) of NDPS Act. Ex.P.8 is the copy of F.I.R. The particulars of arrest were intimated to the relatives of the appellant under Ex.P.9. Further, through Form No.91, 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.

(iii) P.W.1, Tmt. Devaki, when she was working as Examiner in Forensic Science Department, Chennai, on 08.04.2002 received the sample packets through one Kumar. On examination, she found out that the contraband are ganja, for which, she issued a chemical report under Ex.P.2. Further, the requisition letter given by the investigating officer is marked as Ex.P.1. After

receiving the chemical report, the then Inspector of Police, Thousand Lights Police Station(now no more) took the case for investigation and laid the charge sheet.

4. Based on the above materials, the Trial Court framed charges as detailed above. The appellant/accused denied the same as false. In order to prove the case of prosecution, 4 witnesses were examined as P.W.1 to P.W.4 and 12 documents were marked as Exs.P.1 to P.12, besides 3 material objects were marked as M.O.Nos.1 to 3. On the side of the defence, none had been examined and no document was marked.

5. After concluding the trial, the learned Principal Special Judge came to the conclusion that the appellant is guilty and awarded punishment as above. Challenging the said conviction, the appellant, is before this Court by way of filing the present criminal appeal.

6. Heard the arguments advanced by Mr.R.C.Paul Kanagaraj, learned counsel appearing for the appellant and Mr.G. Raman, learned Government Advocate (Criminal side) appearing for the respondent.

7. Initially, the learned counsel for the appellant contended that recovering the contraband from the appellant has not been proved through the prosecution witness cogently and conveniently. Further, he added, the evidence given by P.W.3 is not in accordance with Section 50 of NDPS Act, thereby, the appellant is entitled for acquittal.

8. In this regard, the trial Court on going through the decisions of the Hon'ble Supreme Court in Ajmer Singh vs. State of Haryana (2010 [2] SCC (Cri) 475) and Madan Lal and Another vs. State of H.P. (2003 SCC (Cri) 1664) and came to the conclusion that recovery of contraband is clearly proved by the prosecution. In the said judgments, the Apex Court has clearly held about Section 50 of NDPS Act and the same reads as follows:

"A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or container or a bag or premises. The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. Hence, the contention regarding non-compliance with Section 50 of the Act is without any substance."

9. Now on going through the case on hand, it is clear that the appellant has not used any vehicle or articles for transporting the contraband materials.

10. As per the case of prosecution, the appellant herself possessed one Kilogram of ganja in the polythene cover, thereby, it is necessary for the prosecution to prove the recovery cogently beyond reasonable doubt.

11. In this case, recovery of contraband materials was proved by prosecution through the evidence of P.W.2, P.W.3 and through Ex.P.5 a cover of mahazar. On going through Ex.P.5, three persons had attested as witnesses to the recovery magazar, in which, the first two persons were not examined as witness in the trial Court. Only, Deivanai, who accompanied along with P.W.2 from Thousand Lights Police Station was examined as P.W.3. Now, on going through the evidence given by P.W.3, it is seen that she has stated in her chief-examination as during the time of search, the appellant found possession of polythene packet and the same was handed over to P.W.2. Except the said fact, nothing has been averred by P.W.3.

12. In the said circumstances, as per the evidence of P.W.2, for going to the scene of occurrence, he picks up P.W.3 from Thousand Lights Police Station. But, in this regard, P.W.3 gave evidence as she joined with P.W.2 in Egmore Railway Station.

13. So, the evidence of P.W.3 creates a doubt as to whether the search was made against the appellant is as stated by P.W.2 or not. In this regard, reliance has been placed in the decision of this Court in Karnam Thakka Babu vs. State Rep. by Inspector of Police, Koyambedu Police Station, Chennai [2013 (1) CLT (Cri) 291] wherein, it has been held as follows:

"Though it is not mandatory that seizure should be made by the Police only in the presence of independent witness, wherever it is possible, the police must secure independent witness in respect of seizure made by them and must let in evidence to gain the confidence of the Court. In this case, though P.W.2 had gone to the occurrence spot along with her team, on reaching the occurrence spot, she has not taken any effective steps to procure independent witness."

14. In the case on hand, the evidence of P.W.2 shows that he has not taken any effective steps to secure independent witness

for standing as witnesses to the Recovery. Accordingly, the manner of recovery made by the P.W.2 is doubtful.

15. On going through the other particulars in this case, contraband material was recovered from the appellant on 14.03.2002 itself. Thereafter, the same was sent to the chemical examination only on 08.04.2002. In this regard, the reason for the delay in sending the contraband to the chemical examination, is not clearly explained. Furthermore, after getting the Reference letter from the Court on 05.04.2002, the contraband has handed over to P.W.1 on 08.04.2002 only. Since the Forensic Science Laboratory is situated within three kilometres from the Court it is not necessary to keep the sample for three days. In this regard, the prosecution has not explained under whose possession, the sample material was kept from 05.04.2002 to 08.04.2002. This aspect also creates a doubt over the case of prosecution.

16. Now, on going through the judgment rendered by the learned Principal Special Judge, the above two aspects have not been looked into in proper perspective. So, the judgment of conviction passed by the learned Principal Special Judge needs interference.

17. Therefore, for the reasons stated above, the criminal appeal is allowed. The judgment of conviction passed in C.C.No.247 of 2002 dated 24.01.2012 by the learned Principal Special Judge for NDPS Act is set aside. The appellant is acquitted for the charges. The bail bond if any executed by the accused shall stand cancelled. The fine amount, if paid, shall be returned to the appellant.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Special Judge
for NDPS Act cases,
Chennai.

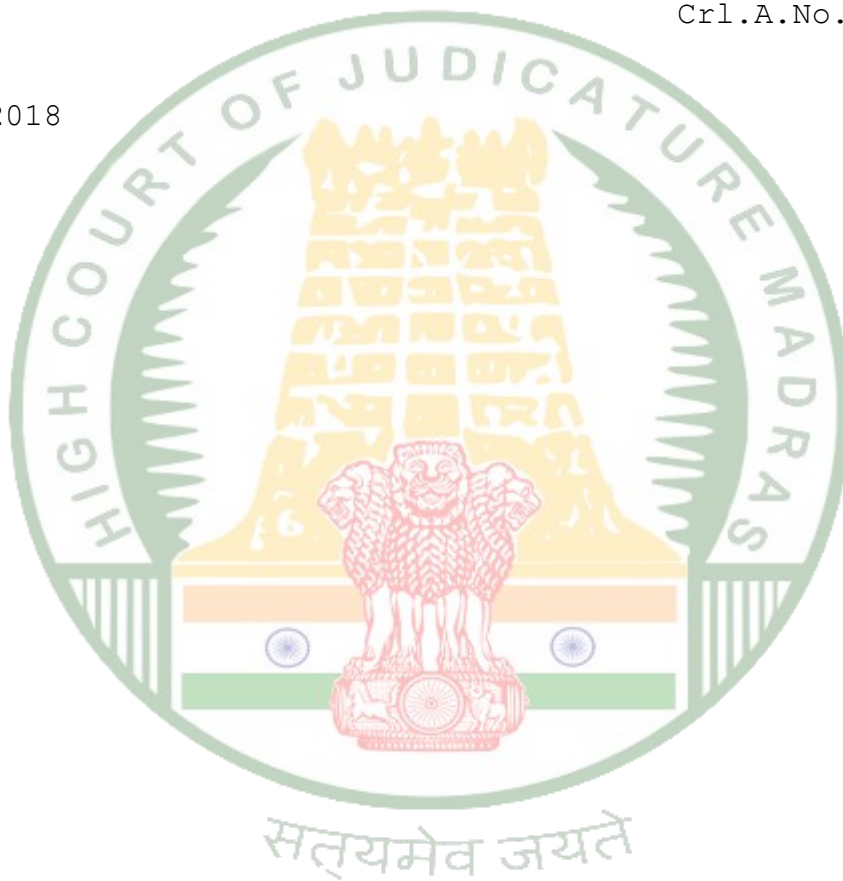
2. Inspector of Police,
NIB CID,
Chennai.

3. The Public Prosecutor,
High Court, Madras-104

4. The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.166 of 2012

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