

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.11.2016
Pronounced on : 29.08.2018

CORAM
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal Nos. 364 and 405 of 2013
and Crl.M.P.No.1 of 2013

Devaraj
S/o. Venkatachalam ...Appellant in both
Crl.As.

Versus

The State rep by
The Inspector of Police,
P-14, Kuniamuthur Police Station,
Coimbatore.
(Crime No.705 of 2010) ...Respondent in both
Crl.As.

Prayer in Crl.A.No.364 of 2018 :- Criminal Appeal filed under Section 454(1) of Criminal Procedure Code, to set-aside the order of confiscation of M.O.4, Maruti Car bearing Regn.No.TN38 AY 3286, passed against the appellant in C.C.No.82 of 2011 dated 06.04.2013 passed by the learned Additional Sessions and Special Court for Essential Commodities Act Cases, Coimbatore.

Prayer in Crl.A.No.405 of 2018 :- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set-aside the conviction and sentence, passed against the appellant in C.C.No.82 of 2011 dated 06.04.2013 passed by the learned Additional Sessions and Special Court for Essential Commodities Act Cases, Coimbatore.

For Appellant
in both Crl.As. : Mr.G.Ashok Kumar
For respondent
in both Crl.As. : Mr.P.Govindarajan
Additional Public Prosecutor.

COMMON JUDGMENT

Both the Criminal Appeals are arising out of judgment dated 06.04.2013, passed by the learned Additional Sessions and Special Judge for Essential Commodities Act Cases, Coimbatore, in C.C.No.82 of 2011. Both the appeals are filed by the sole accused and the issues pertaining to the appeals are inter-related and therefore, they are taken up together for common disposal. Criminal Appeal No.364 of 2013 is filed

against the confiscation of the vehicle and Criminal Appeal No.405 of 2013 is filed against the conviction and sentence.

2.The sole accused in Calendar Case No.82 of 2011 on the file of the learned Additional Sessions and Special Court for Essential Commodities Act Cases, Coimbatore, is the appellant in both the criminal appeals. He stood charged for the offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The learned Additional Sessions Judge, after full fledged trial, found the appellant guilty of offence under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the Narcotic Drugs and Psychotropic Substances Act and convicted and sentenced him to undergo rigorous imprisonment for 26 days and imposed a fine of Rs.6,000/-, in default to undergo rigorous imprisonment for one month for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and further sentenced to undergo rigorous imprisonment for 26 days and imposed a fine of Rs.6,000/-, in default to undergo rigorous imprisonment for one month for the offence under Section 25 of NDPS Act. Challenging the above said conviction and sentence, the accused is before this Court with this Criminal Appeal.

3.The brief facts of the case as stated in C.C.No.82 of 2011 is narrated hereunder:

on 29.09.2010, the P.W.1, working as the Special Sub-Inspector for the Coimbatore City Transport Division, P.14, Kuniyamuthur Police Station, Coimbatore, alongwith a team of police officials were involved in checking the vehicles before the Periyar statue at Kovai Athupalayam. While checking the vehicles, Mr.Kasi Pandian, the Sub-Inspector of Police had received a secret information that some persons are smuggling Ganja in a Maruti Car bearing registration No.TN38 AY 3286. Around 4.45 p.m., the appellant and the car was intercepted and was informed the rights that the car should be searched before the judicial Magistrate or before gazetted officer for which the appellant requested the police officials to check the vehicle. Then P.W.6 along with his team searched the car and found a bag under the seat of the Driver. When it was tested, they found a packet containing of 1.100 gms of contraband. The P.W.1 took the samples weighing 250 gm and then packed and sealed. The remaining contraband was also sealed in a separate cover. Then, seizure mahazar was prepared including the contraband and the Silver colour car bearing TN38 AY 3286. Since, no independent witness has come forward to stood as witness, the contraband and the car were seized before the official witness and the police constables signed in the seizure mahazar. Thereafter, a complaint was registered against the appellant under Section 8(c)

r/w 20(b)(ii)(B) of NDPS Act. The seized materials were sent to the Court from there and forwarded for chemical analysis, received the report from the forensic department and after completing investigation filed a charge sheet against the appellant under Section 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act.

4. On appearance before the trial Court, the substance of the offences were explained. Since the appellant denied the allegations, charges were framed. When the charges were read over and explained to the appellant, the appellant denied the charges and opted for trial.

5. In order to prove the case, the prosecution examined as many as 7 witnesses viz., P.W.1 to P.W.7, marked Exs.P1 to P8 and 4 material objects viz., M.Os.1 to 4.

6. Out of the above said witnesses, according to P.W.1 on 29.08.2010, while he was working as Special Sub-Inspector, Coimbatore City Transport Division, P.14, Kuniyamuthur Police Station, Coimbatore, he alongwith a team of police officials and P.W.6 were involved in checking the vehicles in front of the Periyar statue at Kovai Athupalayam. Whiles, on a secret information received by P.W.6 that a car bearing TN 38 AY3286 was involved in smuggling Ganja, the said car was intercepted and when it was informed the rights to the driver of the car that the car would be searched either before the Judicial Magistrate or before a gazetted officer, the driver told them that the police officials themselves can search the vehicle. While inspecting the vehicle, a cover was taken from a jute bag under the driver's seat and when the same was investigated and it was found to be ganja. When the contraband was weighed, it was around 1.100 grams. A sample of 50gm each were collected in two packets for chemical analysis. The balance contraband and the car were seized and a seizure mahazar was prepared. Since, no independent witness has come forward to stand as witness, the contraband and the vehicle were seized before the official witnesses. Then a case in Crime No.705 of 2010 was registered against the appellant under Section 8C r/w 20(b)(ii)(B) of NDPS Act. P.W.2 is the grade-I police working in the Kuniamuthur Police Station. He informed that by the order of P.W.6, he was involved in the inspection of the motor vehicles before the Periyar statue, Athupalayam Village, Coimbatore. He narrated the occurrence and informed that when he conducted inspection alongwith P.W.6 and other officials, the material objects Nos.1 to 4 were seized before them. P.W.3 is the Junior Research Assistant working in the Forensic Department, Coimbatore District, who gave the

report of the seized materials, which was marked as Ex.P.2. P.W.4 is the Grade-I Bench Clerk working in the CBI Court, Coimbatore, who received the seized contrabands, sent the samples to forensic science laboratory and kept the balance contrabands in the Court. P.W.5 is the independent witness, who works as cashier in the nearby petrol bunk. He deposed regarding the inspection and the seizure of the materials. P.W.6 is the Sub-Inspector, who received the secret message about smuggling of the contraband and under his head, the whole team involved in inspection and seized the contraband.

7. When the above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the charges as false. However, he did not choose to examine any witness and marked any documents.

8. At the conclusion of trial, the learned Special Judge heard the arguments advanced on both sides and considered the evidences. Upon such consideration, the learned Special Judge came to the conclusion that the charge against the Appellant was proved and convicted for the offences punishable under Sections 8(c) r/w 20(b)(ii) (B) and Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him as mentioned supra. Challenging the above said conviction and sentence, the convict is before this Court with the present Criminal Appeal.

9. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor, appearing for the respondent and also perused the materials placed before this Court.

10. The learned counsel for the appellant would submit that the Special Court has not considered the evidence given by the witnesses that there are material contradictions and prosecution failed to establish the alleged search and seizure beyond reasonable doubt. The prosecution failed to explain the reasons for not calling the independent witness. Even P.W.5, who was said to have present at the time of the interception of the vehicle has not stood as witness. He further stated that the appellant has voluntarily produced a packet taken from a bag and the P.W.1 recovered the packet and found that it contains Ganja. At the time of search and recovery, the mandatory provisions of the NDPS Act has not been followed. Therefore, in this case there is lack of material evidence to prove that the appellant was in possession of Ganja in his vehicle. Therefore, the order passed by the Special Judge is liable to be set aside.

11. On going through the records and the case of prosecution, it is seen that on 29.08.2010, P.W.1, the

Sub-Inspector of Police, while on duty had received a secret information that some person is smuggling ganja in a Maruti car bearing registration No.TN 38 AY3286. Immediately, he communicated the same to the higher officials and along with his subordinates intercepted the vehicle and informed the rights to the driver of the vehicle that his car would be searched before any Judicial Magistrate or gazetted officers. The appellant gave his consent for searching his vehicle by the police official themselves. Then, P.W.1 and his subordinates inspected the vehicle and found 1.100 gms of ganja in a jute bag under the seat of the driver, which was marked as Ex.P.1. Thereafter P.W.1 took two sample for chemical analysis and brought the remaining contraband to the police station and registered a case against the appellant under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act and thereafter sent to the Court. After completion of investigation, the respondent police filed a charge sheet under sections 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act and thereafter, sent to the Court. The Special Court has examined seven witnesses on the side of the prosecution and marked eight exhibits and exhibited four material objects and found the appellant guilty of offence under sections 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act and convicted sentenced as mentioned in second paragraph of this judgment.

12.The learned counsel for the appellant would submit that the mandatory provisions of the NDPS Act have not been followed either at the time of intercepting the vehicle or during recovery of the contrabands and no independent witnesses were called for either during interception of vehicle or during recovery. A Special Sub-Inspector does not have any power either to conduct a search or to recover the contrabands and also to register a case. Further, the prosecution has failed to prove the case against the appellant beyond reasonable doubts. The trial Court failed to consider all these aspects and without any materials, convicted the accused and confiscated his vehicle alongwith goods.

13.As already stated, P.W.1, the Special Inspector of Police attached to Kuniamuthur Police Station, while on patrol, before the Periyar Statue at Athupalayam, Coimbatore, P.W.6 received a secret information that one person is smuggling ganja in a car bearing registration No.TN 38 AY3286. From the evidence of P.W.1, P.W.2 and P.W.6, it is very clear that the accused/appellant had smuggled the ganja in the said car and from the evidence of P.W.5, who is the cashier in the near by petrol bunk at the scene of occurrence, it is evident that P.W.1 has intercepted a Maruti car and recovered the contraband. Therefore, from the evidence of P.Ws.1, 5 and 6, the appellant was driving the car towards Coimbatore Aathupalam and the same was

intercepted by P.W.1 and his team and they have legally informed about the right of the appellant that the search of his vehicle has to be done either before the Magistrate or Gazetted officer. The appellant himself had voluntarily stated that the police officials themselves can inspect the vehicle. Further the chemical analysis report is very clear that the samples shows that it is only Ganja. Therefore, from the available evidence of P.Ws. 1, 2, 5 and 6 and also from Ex.P2 chemical analysis report, the prosecution has proved the case beyond reasonable doubts.

14.In view of the above discussions, this Court is of the considered view that the respondent 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 under Sections 8(c) r/w 20(b)(ii)(B) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 and that this Court does not find any merits in the appeal to interfere with the findings of the Special Court.

15.In the result, these criminal appeals are dismissed and the judgment of conviction and sentence dated 06.04.2013 made in CC.No.82 of 2011 passed by the learned Additional District cum Sessions Judge, Special Court for Essential Commodities Act Cases, Coimbatore is hereby confirmed. The Special Judge is directed to secure the accused to undergo the remaining period of sentence, if any.

rm/tsh

Sd/-

Assistant Registrar(CS vii)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Sessions Judge,
Special Court for Essential
Commodities Act Cases,
Coimbatore.

2.The Inspector of Police,
P-14, Kuniamuthur Police Station,
Coimbatore.

3.The Public Prosecutor
High court,Madras.

+2cc to Mr.G.Ashok Kumar , Advocate SR.No. 60205,60206

Judgments in
Crl.A.Nos. 364 and 405 of 2013