

Bail Slip

The Appellant/Accused namely Ramamurthy S/O Chinnasamy was released on bail vide order dated 7/11/2012 in M.P.No.1/12 in Crl A NO.785 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.785 of 2012

Ramamurthy

.. Appellant/Accused No.1

Vs

State: Rep by
Inspector of Police,
Kangayam Police Station,
Tiruppur District.
(Crime No.246/2010)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C, praying to set aside the conviction and sentence passed by the Additional District Judge and Presiding Officer, Special Court under Essential Commodities Act Cases, Coimbatore, in C.C.No.113 of 2010 dated 31.10.2012.

For Appellant : Mr.R.Ezhilarasan
for Mr.V.Ragunathan

For Respondent :M/s.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

The appellant is the first accused in C.C.No.113 of 2010 on the file of the Presiding Officer, Special Court under Essential Commodities Act Cases, Coimbatore. The accused along with one another accused stood charged for the offence under section 8

(b) r/w 20(a) (i) NDPS Act. By a judgment dated 31.10.2012, the trial court convicted him and sentenced to undergo one year R.I with a fine of Rs.5,000/- in default to undergo 3 months R.I under section 8(b) r/w 20(a) (i) NDPS Act. Challenging the said conviction and sentence the appellant is before this court with the criminal appeal.

2. The case of the prosecution is as follows:

On 12.02.2010, PW.10-Thangapandian, the then inspector of police, Kangeyam registered a case against the accused in Crime No.246 of 2010 under section 8(b)r/w20(a)(i) NDPS Act. Ex.P5 is the first information report. After registration of the case, he informed the information received by him to his superior officers and rushed to the scene of occurrence. In the occurrence place, in the presence of PW1-Arusamy-Village Administrative Officer and PW2-Muthusamy- Assistant of Village Administrative Officer, he prepared an observation mahazar under Ex.P1. He examined the witnesses and recorded the statements. Further he recovered the damaged cannabis bags, the tube which was used for irrigation through the seizure mahazar. He drew the rough sketch under Ex.P.7. Thereafter, he sent the material objects to the court through Form-95. However, he submitted a requisition letter to the Magistrate for sending the material objects for chemical examination.

3. PW7-Velmurugan, when he was working as a Junior Scientific Assistant in Coimbatore Forensic Science Laboratory on 29.04.2010, received a letter from the learned Judicial Magistrate, Kangeyam along with the contraband material weighing about 50 grams. On examination he found the said contraband are the cannabis. In this regard he issued a chemical examination report under Ex.P3.

4. In continuation of the investigation, on 13.02.2010 near nall road, PW.6-N.Mathiazhagan, Head Constable, arrested the accused and recorded the statement given by him. Ex.P9 is the statement given by the accused. Further at the time of arresting the accused, PW.6-N.Mathiazhagan, Head Constable, issued a arrest memo to the accused Ex.P.10. On 21.05.2010, he examined the remaining witnesses, completed the investigation and on the same day he filed a final report under section 8(b)r/w20(a)(i) NDPS Act against the accused.

5. Based on the above incriminating materials, the trial court framed the charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove its case on the side of the prosecution as many as 10 witnesses were examined as PW.1 to PW.10 and 10 documents were marked as Ex.P1 to Ex.P10, besides 6 material objects.

6. Out of the said witnesses, PW.1-Arusamy is working as a village Administrative Officer in Paranjervali village. On receipt of information from the investigating officer on 12.02.2010 at about 3.45p.m., he went to the scene of occurrence situated in Kangeyam Village. The survey number pertaining to the occurrence place is 666/A. He has stated that on 12.02.2010 in the occurrence place, PW10-Investigation Officer prepared an observation mahazar and recovered the contraband weighing about 1.5 kilograms. From the total contraband, the investigating officer took 100 grams of cannabis for the purpose of chemical examination. Further, the ash and 6 sticks available in the occurrence place have also been recovered by the investigating officer through the recovery mahazar. The recovered contraband, sample contraband, ash weighing about 250 grams, ash weighing about 100 grams, ash weighing about 150 grams and the 6 sticks which are recovered from the scene of occurrence were marked as M.Os.1 to M.O.6.

(ii) PW.2 is the Village Assistant in Paranjervali village before the trial court, he has stated about the preparation of observation mahazar and about the recovery of Mos.1 to 6 as stated by PW1.

(iii) PW.3, Ravichandran is the resident of Kangeyam. He is an Agriculturist by profession. On 07.02.2010 on the request made by the present accused he went to the scene of occurrence along with his Tractor bearing registration No.TN-33 1280. He has further stated that as per the instruction given by the accused he took the root of the cannabis plants with the help of ploughshare [kalappail] fitted in the tractor. Further he has stated that before he could reach the place of occurrence the cannabis plants found in the occurrence place were completely burned.

(iv) PW.4 and PW.5 are the witnesses for cultivating the cannabis plants by the accused. They have not stated anything in support of the prosecution.

(v) PW.6 Mathiazhagan is working as a head constable in Kangeyam Police Station. He has stated on 12.02.2010 he went to the scene of occurrence along with the investigating officer and helped the PW.10. He has further stated about the recovery of contraband from the scene of occurrence by the investigating officer.

(vi) PW.7 Velmurugan is working as a junior Scientific Assistant, Coimbatore Forensic Science Department. He has stated about receiving of contraband materials from the Judicial Magistrate Court, Kangeyam. On examination he found the sample received by him is the cannabis.

(vii) PW.8 and PW.10 are the Police Officers who had stated about the registration of the case, details of investigation and about the filing of the final report.

(viii) PW.9 is the Head Clerk working in the Judicial Magistrate Court, Kangeyam, who had stated about the sending of contraband materials to the forensic science department for chemical examination.

7. When the above incriminating materials were put to the accused under section 313 Cr.P.C. they denied the same as false. However, they did not choose to examine any of the witnesses nor mark any documents on their side.

8. Having considered all the above, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this court with this criminal appeal.

9. I have heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.side) appearing for the State and also perused the records carefully.

10. The first and foremost contention raised by the learned counsel for the appellant is that the witnesses examined on the side of the prosecution in the trial court has given contradictory evidence with regard to the recovery of sample. Further he submits that the said aspect alone is sufficient to show that the accused have not committed any offence as alleged.

11. On the other hand, the learned Government Advocate would contend that the witnesses in this case are all examined after one year from the date of occurrence, so, it is probable that some contradictions are available in their evidence. According to him the conviction and sentence imposed upon the accused is correct.

12. On considering the said submissions with the records, it is found that in the occurrence place in the presence of PW.1 and PW.2, the investigating officer in this case recovered the contraband materials weighing about 1.5 grams. Only from that he took 100 grams of contraband for the purpose of chemical examination. In the said situation, in the evidence given by the chemical examiner, he categorically mentioned that he received the samples weighing about 50 grams. Further the investigating officer has not stated anything about the details of packing the

sample cannabis. So, the contradiction arising in the evidence of PW1 and PW6 will create a doubt whether the samples received by the chemical examiner is collected in the occurrence place or not.

13. Furthermore, as per the evidence of PW1, from the occurrence place, the investigating officer recovered the damaged roots and ashes, for the purpose of chemical examination. But those material objects have not been sent to the chemical examination. In this aspect, the investigating officer does not offer any explanation for non sending of those material objects.

14. Reliance is placed on the judgment of this court in CHELLAPPA vs. THE STATE reported in 2015(2) MLJ (Cr1.) 219, wherein, it has observed as follows:-

"27.....The prosecution has not led any evidence whether the chemical analyser received the sample with proper intact seals. It creates a doubt whether the same sample were sent to the chemical analyser.

28. As already pointed out, P.W.5 has admitted that he cannot tell as to the sample number of the sample contraband drawn immediately after the seizure, though specific number has been assigned to each of the sample drawn from the contraband in possession of the respective three accused."

So, on following the said observation in this case also the chemical examiner who received the sample from the Court, did not say anything about the seal affixed in the sample contraband. Moreover, the investigating officer himself did not say anything about the details of preparing the sample contraband. So, in this aspect the investigating officer without knowing the procedures to be followed in the NDPS Act, has completed the investigation which is nothing but erroneous in law.

15. Furthermore, as per the case of the prosecution, the accused herein cultivated the cannabis plants in his field. Now the case of the defence is total denial. So it is necessary to prove the land in which cannabis plants were planted belongs to the accused. In this case in order to prove the ownership of the land no document was recovered from the village administrative officer nor was it exhibited before this court. In this aspect also the prosecution fails in its attempt to prove his case.

16. In this regard, PW1, who is the Village Administrative Officer has stated in his chief examination that as per the records the land cultivated by the accused does not belong to him. Even though the other witnesses examined on the side of the prosecution stated that the said land belongs to the father of the accused, it is the duty to the prosecution to prove that the said land is in possession of the accused at the time of committing the offence. But in this case no revenue records have been recovered by the police officers to prove the possession of the accused.

17. More than that as per the case of prosecution, PW3 reached the place of occurrence before the time when the Investigating Officer reached the occurrence place. In the trial court PW3-Ravichandran, has stated at the time he reached the field of PW1 no cannabis plants were available. If the said evidence is true one, there is no chance for recovery of contraband from the occurrence place.

18. In the said circumstances, the learned trial judge without considering the above aspects convicted the appellant. The said findings has to be necessarily set aside.

19. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant by the Additional District Judge and Presiding Officer, Special Court under Essential Commodities Act Cases, Coimbatore, in C.C.No.113 of 2010, dated 31.10.2012 is hereby set aside and the appellant/accused is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant/accused.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

1. The Additional District Judge and Presiding Officer,
Special Court under Essential Commodities Act Cases,
Coimbatore.
2. The Inspector of Police,
Kangayam Police Station,
Tiruppur District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Chennai.-104.

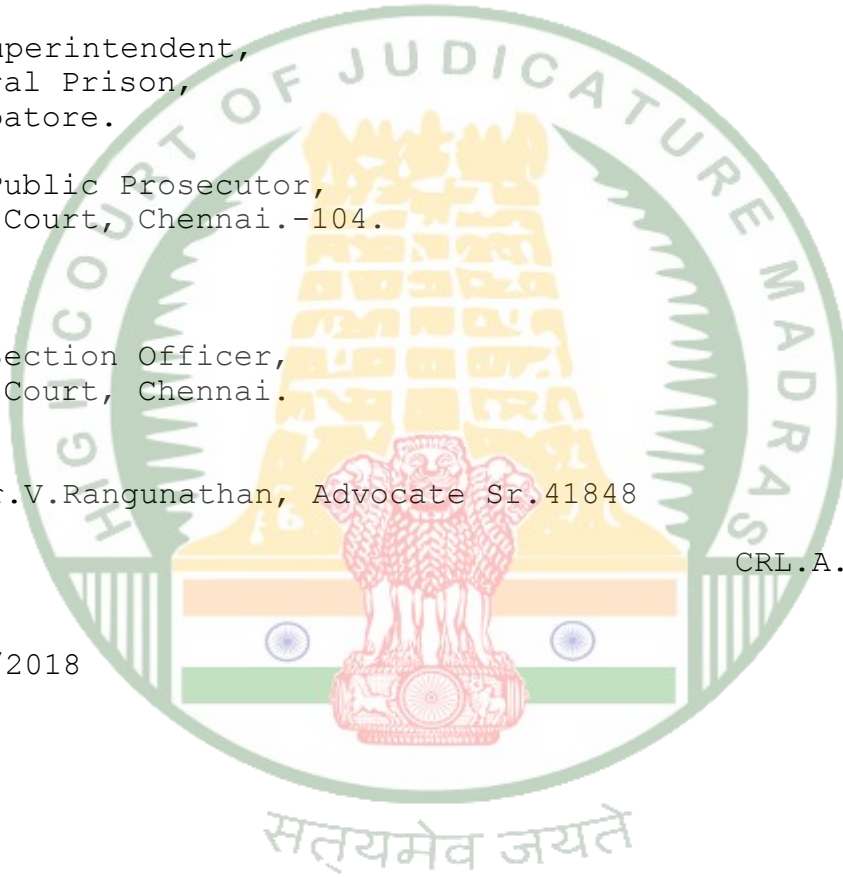
Copy to

The Section Officer,
High Court, Chennai.

+1cc to Mr.V.Rangunathan, Advocate Sr.41848

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srg 13/11/2018



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