

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.448 of 2013

Sekar

.. Appellant / Accused

Versus

State by

The Inspector of Police,
Narcotic Information Bureau,
Chennai.

.. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 03.06.2013 in C.C.No.57 of 2007 on the file of learned Principal Special Judge for NDPS Act Cases, Chennai.

For Appellant : Mr.K.M.Narayana Kumar
For Respondent : Mrs.T.P.Savitha
Government Advocate [Criminal Side]

J U D G M E N T

The appellant is the sole accused in C.C.No.57 of 2007 on the file of the learned Principal Special Judge for NDPS Act. He stood charged for the offence under Section 8(c) r/w 20(b) (ii)(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as "NDPS Act"]. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the trial Court, found the appellant guilty of offence under Section 8(c) r/w 20(b)(ii) (c) of NDPS Act. The appellant was accordingly convicted and sentenced to undergo 11 years rigorous imprisonment with a fine of Rs.1,00,000/-, in default to undergo 2 years rigorous imprisonment. Challenging the said conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

2. The facts leading to the filing of this appeal are briefly narrated as follows:-

2.1. On 22.05.2007 at about 15.30 hours, P.W.2 [Malaiswamy], the then Sub-Inspector of Police attached with the respondent Police Station received an information through the informant, with regard to the transport of cannabis concerned.

P.W.2 reduced into writing under Ex.P.2 and sent it to the immediate superior in compliance of Section 42(2) of NDPS Act, marked under Ex.P.4. Subsequently, he reached the Egmore Railway Station at about 17.00 hours.

2.2. After identifying the appellant through the informant, P.W.2 introduced himself and verified the name and other particulars of the appellant. The appellant told to him that he belongs to Kodaikanpatti near Ussalampatti, Madurai District. After confirmation, P.W.2 informed to him that he is going to search. Further, he told to the accused that you had the right of option that search to be made either before the Gazette Officer or in the presence of Judicial Magistrate, for that, the appellant replied that it is not necessary to conduct search in front of the officer mentioned above and permitted the P.W.2 for conducting the search. Consent given by the appellant is reduced into writing and obtained signature from him under Ex.P.5.

2.3. Subsequently, P.W.2 invited one Ramesh Kuppuswamy, one Arulkumar and one peter for standing as a witness to the search made on the accused. Among the said witnesses, Ramesh Kuppuswamy is an independent person and others are police officers. During the time of search, the appellant handed over the red colour rexine trolley suit case to P.W.2. On verification, it was found that 18 kilograms of cannabis is kept inside the suitcase. So, P.W.2 recovered the suit case in the presence of the above witnesses. Thereafter, he took 2 samples weighing about 50 grams of cannabis for chemical examination. After taking the samples, he kept the same in 2 polythene bags. Thereafter, the same was covered by using brown cover. Further, he put the NIP seal over the sample packets.

2.4. Further at the same time, the appellant produced one green colour travel bag, which contains 7 kilograms of cannabis. In the said contraband, P.W.2 took 2, 50 grams sample packets and the same is packed for chemical examination as already stated. The four sample packets are named as S.1 to S.4. Further, the contraband found in the red colour pack is named as P.1 and found in the green colour bag is named as P.2. The above contraband samples are recovered in the presence of witnesses as already stated under the cover of seizure Mahazar [Ex.P.6].

2.5. Further, the appellant gave a confession statement before P.W.2, in which, he admitted the guilt. In the meanwhile, P.W.2 given the arrest intimation memo to the appellant under Ex.P.7.

2.6. After concluding the above formalities, P.W.2 produced the appellant and the contraband materials before the

P.W.4. In this regard, P.W.2 prepared the Special Report under Section 57 of NDPS Act and handed over the same to P.W.4.

2.7. After receiving the contraband, a case has been registered against the accused in Crime No.57 of 2007 under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act. Ex.P.10 is the printed First Information Report. After registration of the case, P.W.4 made arrangements for sending the appellant to the judicial custody. Further, he produced the sample packets before the Court with requisition to send the same for chemical examination. P.W.1 [S.Sofia], Assistant in Forensic Science Department, Chennai, when she was on duty, on 01.06.2007 received a letter from the Court under Ex.P.1. Further, she received the samples relate to this case and on examination, she found that the samples received from the Court are "Ganja". Ex.P.2 is the chemical examination report. The returned samples are marked as M.O.1 and M.O.2. After receiving the chemical examination report, P.W.4 examined the P.W.1 and recorded the statement.

2.8. After taking cognizance, the trial Court has issued summons to the appellant and on his appearance, the copies of the document relied on by the prosecution are furnished to the appellant under Section 207 Cr.P.C., and after giving sufficient time, he was questioned with reference to the averments made in the charge sheet, for which, the appellant pleaded not guilty. Accordingly, the trial Court framed the charges under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act.

2.9. In order to sustain their case on the side of prosecution, 4 witnesses were examined as P.W.1 to P.W.4 and 11 documents were marked as Ex.P.1 to Ex.P.11, besides 6 material objects.

2.10. Out of the said witnesses, P.W.1 is the chemical examiner working in a Forensic Science Department, Chennai, she has stated in her evidence as she received a letter dated 01.06.2007 in S.No.443/2007 from the learned Principle Sessions Court for NDPS Act along with the sample contraband. She has further stated in a letter received from the Court, there is a request made for chemically examine the sample cannabis. After examination, it was found that the samples received is nothing but Ganja. Thereafter, she issued chemical examination report under Ex.P.2 and returned the remaining samples to the Court.

2.11. P.W.2 [Malaichamy] is the then Sub-Inspector of Police, NIB Police Station, Chennai. He has stated in his evidence that on 22.05.2007 at about 15.30hours, the information was received from the informant in respect to the selling of Ganja. He has further stated after recording the information received from the informant, placed the same before the Inspector [P.W.4]. After getting permission for further

proceeding, he went to the scene of occurrence and after adopting the procedure laid in the NDPS Act, he tested the accused and recovered the contraband in the presence of witnesses.

2.12. P.W.3 is the then Head Constable, Kuvathur Police Station, depose in support of the evidence given by the P.W.2. He specifically stated in his evidence about the information received from the informant, arrest of the accused and the particulars of search and recovery.

2.13. P.W.4 is the then Inspector of Police in the NDPS wing, Chennai, has stated about the registration of the case, submitting the application before the Court for sending the sample packets to chemical examination and about the filing of final report after completing the investigation.

2.14. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., and for which, the accused pleaded not guilty, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

2.15. The learned trial Judge on perusal of the materials placed and considering the arguments advanced on both sides convicted and sentenced the appellant as stated supra. Challenging the same, the present appeal has been filed before this Court.

3. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.K.M.Narayana Kumar, learned counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The learned counsel appearing for the appellant has drawn the attention of this Court to the testimony of P.W.1 and P.W.2 and submitted that though the samples have been drawn, the seized sample contraband assigned with S.Nos.S.1 to S.4 were not handed over for the chemical examination. It is further submitted that the evidence of P.W.1 gave a source that the sample packets are not having any seal as stated by P.W.2. Accordingly, the samples prepared by the P.W.2 is not sending for chemical analysis, thereby, the accused is entitled the relief of acquittal.

5. On considering the said argument with the facts of the case, P.W.2, who is the Police Officer prepared the sample packets clearly stated in his evidence as after packing, the seal of the NIP was affixed on the top of the sample packets. He

stated in the chief examination, after taking two, 50 grams of cannabis, the same was kept in a polythene bag. After putting a stapler pin, the said polythene bag was kept in a brown cover and thereafter, the same was tightened with by using the thread banked and finally, the seal of the NIP was fixed and tagged. Further, he stated the sample packets, who prepared at the time of recovery were named as Serial Nos.S.1 to S.4.

6. In this regard, P.W.1, who received the sample packets for chemical examination has stated in her chief examination that the sample packets named as Serial Nos.S.1 and S.3 were received on 01.06.2007. During the time of examination, it was found that the samples were kept in the polythene bag. Except the said evidence, she did not say anything about the brown cover and the seal containing the name of NIP. No doubt, the said aspect creates a doubt whether the sample packets preferred by the P.W.2 were sent to the chemical examination or not. Furthermore, in the cross-examination, P.W.1 has clearly stated that there is a register maintained in her office for recording the particulars of samples. Further, she stated that the said register is not produced in this case. Furthermore, she specifically stated that she did not know which person, who working in her office has received the samples from the Court, that also creates a doubt as whether the samples prepared by P.W.2 were produced for chemical examination or not.

7. Now, 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. In the above said paragraph, it has been stated that '...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....' सत्यमेव जयते

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.

29. In Ex.P.7 - chemical analysis report also, the seal number has not been mentioned. In the light of the said fact, the chemical analysis report marked as

Ex.P.7 is also of no use for the prosecution for the reason that unless a particular sample with seal number is relatable to the concerned accused, it cannot be said that the contraband carried by the accused was 'ganja'."

8. Now, applying the principle laid down by this Court with the case in our hand, the said infirmity in respect to the sample drawn from the contraband will definitely vitiate the case of prosecution. In this case also, Ex.P.2 the chemical examination report is no use for the prosecution to prove the case and the evidence given by the P.W.1 create a doubt whether the sample drawn from the contraband alone send to the chemical examination or not, and hence the appellant/accused is entitled to benefit of doubt. The trial Court has not properly appreciated the material placed before it in perspective manner. So, the findings arrived at by the trial Court needs interference.

9. In the light of the above discussions, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant by the learned Principal Special Judge for NDPS Act Cases, Chennai, in S.C.No.57 of 2007, dated 03.06.2013 are 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-VII)

//True Copy//

Sub Assistant Registrar

at / sri

To

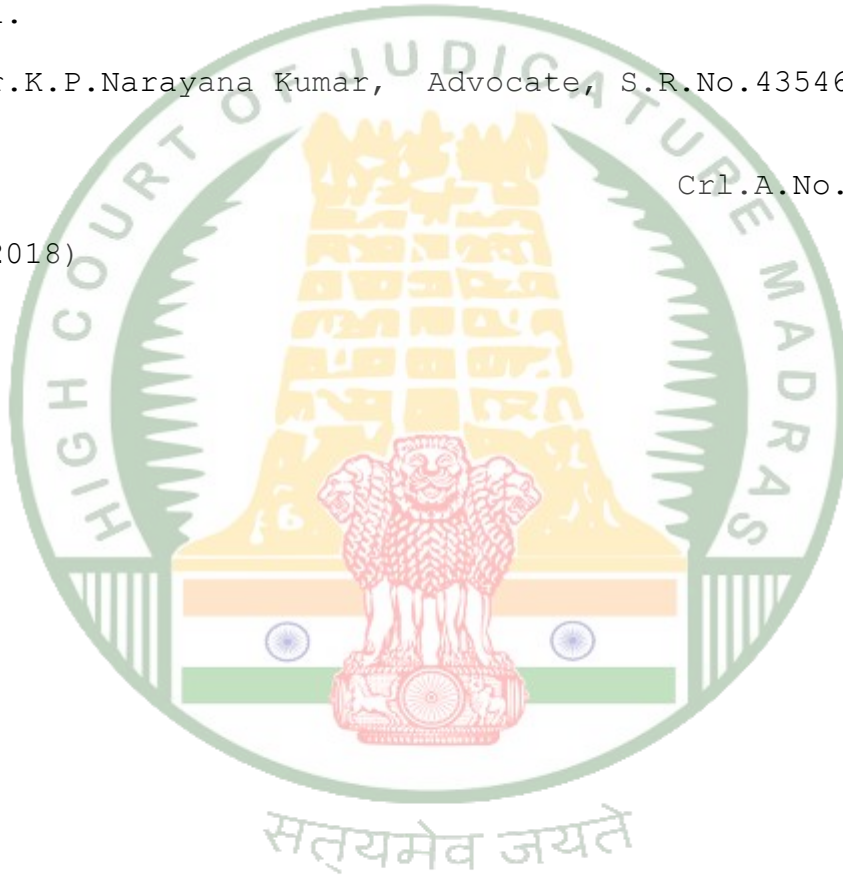
- 1.The Principal Special Judge for NDPS Act Cases,
Chennai - 600 104.
- 2.The Inspector of Police,
Narcotic Information Bureau,
Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.

4. The District Collector,
Chennai.
5. The Director General of Police,
Mylapore, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

+1cc to Mr.K.P.Narayana Kumar, Advocate, S.R.No.43546

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NRL (CO)
GN(12/09/2018)



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