

Bail Slilp

The Appellant/Accused namely Chitra W/o Babu (Accused in CC No.54/2010 dated 27/08/2013 on the file of the Judge, II Additional Special Court under NDPS Act, Chennai) was directed to be released on bail as per order of this court dated 11/09/2013 in MP No.1/2013 in Crl A No.588/2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.588 of 2013

Chitra ...Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
NIB CID, Chennai. ...Respondent/Complainant

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure against the judgment of conviction dated 27.08.2013 made in C.C.No.54 of 2010 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai.

For Appellant : Mr.T.S.Srinivasan

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.Side)

Judgment

This criminal appeal has been filed against the judgment of conviction dated 27.08.2013 made in C.C.No.54 of 2010 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai.

2 Case of the prosecution is that, while P.W.2, the Inspector of Police, NIB CID, Chennai, was on duty, had received information on 24.02.2010 at about 12.00 hours, about the illicit sale of Heroin by the accused. Immediately, P.W.2 had reduced the same into writing and submitted before his immediate Senior Officer, P.W.5/the Inspector of Police and obtained permission to proceed further. Thereafter P.W.2 proceeded to the place of occurrence with P.W.3, Head Constable and P.W.4, Tmt.Kavitha, Woman Police and identified the accused through

informer. The accused came with polythene bag, which had been kept in her left hand and they introduced themselves. The accused was informed about her right to be searched either before the Gazetted Officer or before the Magistrate and enlightened about Section 50 of the NDPS Act, through Ex.P4 Notice, wherein the appellant/accused signed and refused to avail the right under Section 50 of the NDPS Act and stated that the officer/P.W.2 himself can made search. Thereafter, P.W.2 called two persons, who were available at the place, since they had refused to stand as witness for the search to be made, P.W.2 searched the accused before two witnesses P.W.3 and P.W.4, who were accompanied with him and recovered contrabands i.e. 10 grams of Heroin.

3 P.W.2 had drawn out samples M.O.1 & M.O.2, 2 grams each, and M.O.3 balance 8 grams of Heroin, packed in brown cover, tied and sealed and obtained signatures of accused and witnesses. Thereafter, prepared recovery Mahazar Ex.P5 and issued arrest memo Ex.P6 and after coming to the Police Station, P.W.2 had prepared his report/Ex.P7 under Section 57 of the NDPS Act and entrusted all the above to the P.W.5, the Senior Inspector of Police. P.W.5, the Inspector of Police after receiving Ex.P7/Report from P.W.2, since the accused had no valid license or any permission for possession of 10 grams of contraband, had registered FIR/Ex.P8 and a case in Crime No.17 of 2010 against the appellant/accused under Sections 8 (c) r/w 21 (b) of NDPS Act, 1985, and prepared Form 95/Ex.P9 and forwarded all the above to the learned Magistrate and thereafter transferred to the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, which was taken on file in C.C.No.54 of 2010.

4 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P11 were marked along with Material Objects 1 to 3. On the side of the defence, no one was examined no document was marked.

5 The learned Special Judge, after trial, found the appellant/accused guilty of offence under Sections 8 (c) r/w 21 (b) of NDPS Act, 1985, and by judgment dated 27.08.2013, convicted her and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a further period of three months.

6 Aggrieved against the judgment of conviction dated 27.08.2013, the convict had preferred this present criminal appeal before this Court.

7 The learned counsel for the appellant/accused would

submit that even though the place of occurrence was very busy and there were many shops and permanent residents, the prosecution had failed to examine any independent witness and the person, who had taken the sample for chemical analysis also not examined. Further the learned counsel for the appellant would contend that there are many material contradictions in the evidences of prosecution witnesses and also the document produced by the prosecution and also there was contradiction regarding time of occurrence. There was delay in submitting the recovered contraband before the Court, which is fatal to the case of the prosecution. Furthermore, as per Standing Orders, minimum 5 grams should be taken as sample for chemical analysis. In the present case, two grams only taken as sample, which is violation of the Standing Orders. The prosecution failed to examine any independent witness and thereby violated the law laid down by the Hon'ble Supreme Court reported in (2018) 1 Supreme Court Cases (Cri) 350, further minor contradictions also should not be omitted. The trial Court had failed to consider the fact there is no previous case against this appellant/accused and this is the first case. Hence the appellant/accused is entitled for acquittal and she prayed atleast to minimise the sentence imposed on her by the trial Court, considering the fact, that the appellant is being lady and is sole bread winner of her family.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.2/ the Inspector of Police, soon after receiving the secret information about the illicit sale of Heroin, reduced the same into writing and obtained necessary permission from his immediate superior and proceeded to the place of occurrence. He identified the accused and duly informed the appellant/accused about the right to be searched either before the Gazetted Officer or before the Magistrate and issued Notice/Ex.P4 under Section 50(1) of the NDPS Act, and obtained signature, thereby the mandatory provision has been duly complied with. After completing legal formalities, since no one had come forward to stand as witness, the team members, who accompanied with P.W.2, had stood as witness for the search and recovery mahazar and recovered 10 grams of Heroin from the appellant/accused and took her to the Police Station. P.W.4, after investigation filed a final report before the II Additional Special Judge for NDPS Act, Chennai, for further trial. The Chemical Analyser, who examined as P.W.1, had given a report Ex.P2, which reveals that the contraband seized from the appellant/accused has contains substances of Heroin, which is prohibited. Since the appellant/accused, neither had any valid license nor got any permission for possession of 10 grams of Heroin, she was in conscious possession of the contraband and thereby committed offence punishable under Sections 8 (c) r/w 21 (b) of NDPS Act, 1985.

9 P.W.2 and P.W.3 had categorically deposed and they have also spoken about the compliance of the mandatory provisions of the NDPS Act. P.W.3 & P.W.4 had corroborated the evidence of P.W.2/Seizure Officer. Further minor contradictions as stated by the learned counsel for the appellant/accused, will not go to root of the case and the person, who had taken the sample for chemical analysis need not be examined in all the cases, except circumstances warrants. Further 2 grams of contraband, taken as sample, which has not been rejected by P.W.1/Chemical Analyser and he had not stated that it was not possible to analyse the quantity sent by the prosecution. Hence, the trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant, which does not warrants any interference of this Court.

10 Heard the rival submissions made by the learned counsel appearing on either side and perused the original records.

11 According to the learned counsel for the appellant/accused there were many contradictions in the evidences of prosecution side witnesses and the prosecution had violated the Standing Orders and mandatory provisions of the NDPS Act and there was contradictions regarding the time of occurrence. On a perusal of the records, it reveal that search and recovery and all were happened between 12.00 p.m. to 4.00 p.m. It is not mathematical calculation that everyone has to do their work as calculator. The prosecution immediately after registering FIR forwarded both the documents and accused along with material object to the jurisdictional Magistrate and the Magistrate also affixed his signature in Ex.P.9. On a perusal of the evidences of P.W.2 to P.W.5, it reveal that there was no much contradictions as stated by the learned counsel for appellant/accused. The minor contradictions, which had been stated by the learned counsel for the appellant/accused are not material contradictions and the same will not vitiate entire case of prosecution and the same will not go to root of the case. The prosecution had clearly proved possession and recovery of contraband, through evidence of P.W.2, which had been corroborated by P.W.3 and P.W.4.

12 In the present case, all the oral and documentary evidences and the material objects and the report/Ex.P2 are clearly show that the prosecution had proved its case beyond reasonable doubts. Even though there was some defect committed by the prosecution, mere defect in investigation, on the part of the prosecution, is not sole ground to acquit the accused, since possession and recovery had been proved. When the prosecution had proved possession and recovery of the contraband, the

appellant/accused must rebut the same with substantial materials in the manner known to law. The trial Court has gone into all these aspects and found the accused guilty. From the documentary evidences and the judgment of conviction made by the Court below, this Court, as a first appellate Court, after re-appreciating entire materials, found the accused guilty of offence under Section 8 (c) r/w 21 of NDPS Act, 1985. There is no valid ground to take a different view in the matter and the further, even though, the learned counsel for the appellant has prayed to minimise the sentence, this Court, considering the nature of the offence and quantum of contraband, seized from the appellant/accused, is not inclined to reduce the sentence, since the trial Court had already awarded a lesser punishment of one year.

13 In the result, the criminal appeal stands dismissed, judgment of conviction dated 27.08.2013 made in C.C.No.54 of 2010 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, is hereby confirmed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The II Additional Special Judge for NDPS Act, Chennai.

2. The Public Prosecutor, High Court of Madras.

3. The Superintendent, Central Prison, for Women Puzhal, Chennai.

4. The Inspector of Police, NIBCID, Chennai.

+1cc to Mr.T.S.Srinivasan, Advocate SR.No.60477

Cr1.A.No.588 of 2013

VSNI(CO)

GMV(14/11/2018)