



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.10.2018

DELIVERED ON : 15.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A(MD)No.66 of 2014

and

Crl.M.P(MD)No.6521 of 2018

John Susai Navies Mannala @ Mannala : Appellant/Accused No.1/
Petitioner in Crl MP

Vs.

State represented by
The Intelligence Officer,
NCB (Narcotic Control Board),
Chennai.

(FIR No.48/15/200).

: Respondent/Complainant/Respondent in
Crl MP

The Superintendent,

Central Prison, Madurai : Respondent No.2 in Crl MP

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment of Conviction and sentence dated 30.12.2013 passed in C.C.No.93 of 2009 by the learned Additional District and Sessions Judge, Special Court for E.C. Act, Pudukkottai.

For Appellant : Mr.T.Mohan
for Mr.M.Jegadeesh Pandian

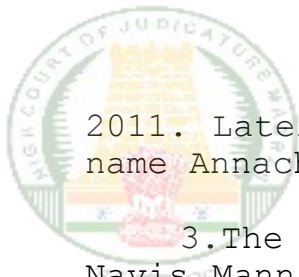
For Respondent in : Mr.C.Arul Vadivel @ Sekar,
Criminal Appeal Spl. Government Pleader for NCB

For Respondent No.2 in : Mr.A.Robinson,
Crl.M.P(MD)No.6521/2018 Govt. Advocate (Crl. Side).

JUDGMENT

The Judgment and sentence dated 30.12.2013 passed in C.C.No.93 of 2009 by the learned Additional District and Sessions Judge, Special Court for E.C. Act, Pudukkottai are being challenged by the appellant/Accused No.1 in the present Criminal Appeal.

2.The appellant herein is the first accused in C.C.No.93 of 2009 on the file of Special Court of Essential Commodities and NDPS Act Cases, Pudukkottai. In the complaint filed by the Intelligence Officer, NCB, this appellant and 8 others were arrayed as accused for offences under the NDPS Act, 1985. In the complaint, Usman @ Nepolean (A-5), Jamal @ Lucky (A-6), Shakil (A-7), Vimal (A-8) and Rogan (A-9) were shown as absconding accused and the case against them were split up as C.C.No.105 of 2009. Pending trial, Vasantha Kumar (A-3) jumped bail and the the case against him got split up from the main case and numbered as split up case in C.C.No.27 of



2011. Later, during the course of the trial, yet another accused by name Annachi @ Arulraj (A-4) died.

3. The Special Court tried the remaining accused, John Susai Navis Mannala @ Mannala (A-1) and Andrews (A-2) for the charges for conspiracy, to possess and for attempt to illegally smuggle out of India to Srilanka, 1 kg of heroin and 3 kg of ganja.

(i) under Section 8(c) read with 20(b)(ii)(B), 8(c) read with 21 punishable under Section 21(c);

(ii) under Section 8(c) r/w 28; and

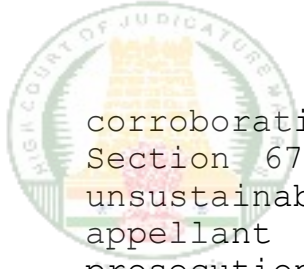
(iii) under Section 8(c) r/w 29 of the NDPS Act.

4. The Trial Court held the first accused Mannala, guilty and convicted and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo one year rigorous imprisonment for each of the offences under Sections 8(c) read with 21, 8(c) read with 28 and 8(c) read with 29 of the NDPS Act. The Trial Court also sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo 6 months rigorous imprisonment for offence under Section 8(c) read with 20(b)(ii)(B) of NDPS Act, 1985. The period of sentence for the substantive offences (4 in numbers) ordered to run concurrently with a direction to set off the period of sentence already undergone. Thus, the total period of imprisonment was 10 years and total fine amount to be paid was Rs.3,10,000/-. The default sentence was 3 years and 6 months.

5. The second accused Andrews was acquitted of all charges for want of proof.

6. The learned counsel appearing for the appellant makes his submission on two folds:

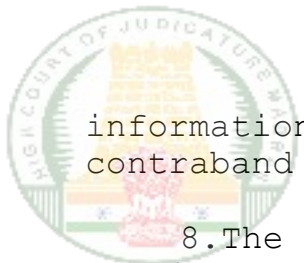
(i) First, it is contented that, the Trial Court has miserably failed to appreciate the evidence for prosecution in proper perspective. Solely based on the so-called confession statement of the accused given to PW-4 which was recorded under section 67 of the NDPS Act, the Trial Court has convicted the accused. The circumstances under which the confession statement extracted from the accused will prove beyond doubt that it was obtained under compulsion. Further, the heroin or ganja alleged to have been in the possession of this accused was admittedly recovered from a place called Nalupannai, buried in beach sand and not from the physical possession of this appellant. The Trial Court has acquitted the second accused for want of proof. All other accused persons are still at large and they are all Srilankan nationals even according to the prosecution. Except the so-called confession of the appellant (Ex.P-39) and the statement of the absconding accused Vansanthakumar, there is no material to prove that this appellant and Vasanthakumar (absconding accused in the split up case in C.C.No.27 of 2011) know each other or this appellant received the seized contraband from Vansanthakumar. In the absence of any



corroboration, merely relying on the statements recorded under Section 67 of the NDPS Act, conviction against the appellant is unsustainable. The manner in which the summons issued to this appellant to give his statement, the contradictions among the prosecution witnesses and the documents regarding recovery of the contraband, the sudden inclusion of ganja in the seizure report without explaining the source and trail of ganja all put the prosecution case under suspicion. Therefore, the Trial Court judgment ought to be set-aside.

(ii) The second fold of the submission put forth by the appellant counsel is that the appellant was arrested 9 years back and incarcerating since then. The period of substantive sentence of 10 years rigorous imprisonment is likely to be over within few months. If the Court does not find merit in the appeal, indulgence may be shown in default sentence. The appellant have no money to pay fine of Rs.3,10,000/-. Hence, he has to undergo another 3½ year rigorous imprisonment apart from the substantive sentence of 10 years. Taking note of the financial depravity of the appellant and his poor health condition, he must be shown humane consideration by waiving default sentence. Conceding that the NDPS Act prescribes minimum sentence of imprisonment as well as minimum fine, nothing less than minimum sentence of imprisonment and fine can be imposed. However, the sentence in default to pay fine is within the discretion of the Court and hence it is legally permissible to impose the least period of imprisonment in default to pay fine.

7. In response to the submissions made by the appellant through his counsel, the learned Special Government Pleader appearing for the respondent would submit that based on the specific information received by K.R.Srikanth (PW-1) Intelligence Officer, NCB, on 31.03.2009 regarding trafficking of narcotic drugs by named accused from Madhyapradesh to Srilanka through Rameshwaram, Murali (PW-2), Intelligence Officer, who was camping at Ramanathapuram was informed to take necessary action. PW-2 and PW-4, both Intelligence Officers attached to NCB with the help of local police located the residence of the appellant at Thangachimadam. On enquiry about the contraband received from Vasanthakumar, the appellant admitted the receipt of it and also took them to Nallupanai and handed over one kilogram of heroin and 3 kilograms of ganja kept in a gunny bag and buried in sand. The contraband was seized under mahazar (Ex.P-19). The appellant was served with summons under Section 67 of the Act to appear before PW-4 and to give statement. The appellant voluntarily gave statement implicating himself and other accused. The statement of the appellant marked as Ex.P-39 contains wealth of details about him and his family background including his knowledge about the trail of the contraband he possessed. Based on the information which was exclusively within his knowledge, the contraband of one kg heroin and 3 kg ganja was seized in the presence of independent witnesses. The mahazar carries the signatures of the appellant and the independent witnesses. One of the witnesses to the seizure <https://hcservices.ecourts.gov.in/hcservices/> Thiru. Thirunilrajam (PW-5) who is an independent witness has corroborated the evidence of PW-2 and PW-4 in respect of the



information given by the appellant and later recovery of the contraband marked as M.O.2 to M.O.11.

8.The learned Special Government Prosecutor for NCB also submitted that the Trial Court after due consideration of the evidence had rightly held the accused guilty. Hence, the appeal deserves to be dismissed.

9.Point for consideration:

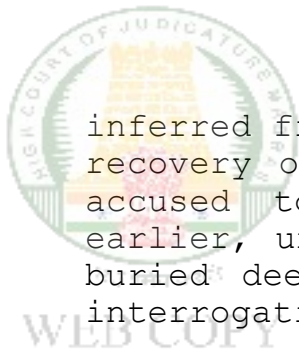
"Whether the contradictions pointed out by the appellant's counsel renders the prosecution case doubtful?"

10.The case of the prosecution is that PW-1 received secret information (Ex.P-1) from their informant that one Annachi @ Arulraj (Srilankan national) temporarily residing at Kanathur, ECR Chennai, procured heroin from Madhyapradesh through one Vasanthakumar and clandestinely transporting to Srilanka. Mannala (the appellant herein) and Andrews (acquitted accused) are engaged by them for the onward transport from Thangachimadam (Rameshwaram, India) to Mannar (Srilanka). Through these two persons, contrabands are delivered to one Usman at Mannar (Srilanka). Based on the information, Murali (PW-2) and Thayumanavan (PW-4), who were camping at Ramanathapuram went to the residence of the appellant, interrogated him and recovered the 1 kg of heroin and 3 kgs of ganja. They were tested with field kit and confirmed to heroin and cannabis respectively. The samples drawn from it were sent for chemical analysis and confirmed to be heroin and cannabis through chemical analysis reports (Ex.P-30 and Ex.P-31). Ex.P-19 is the seizure mahazar of the contraband. It reveals the search and seizure proceedings started at 11.00 hours and ended at 15.30 hours. Meanwhile, based on the information given by this appellant, the house of the accused Vasanthakumar (absconding) was searched and he was apprehended. Vasanthakumar has admitted his guilt in trafficking narcotic drug and given a confession statement to PW-1.

11.From the facts proved, it is clear that the appellant had conscious possession of the contraband, though not the physical possession. The contraband has been recovered from sand near Nalupanai on the information furnished by the appellant. They are proved to be heroin and ganja respectively.

12.The contradictions with regard to date found below the signature of PW-1 in Ex.P-3, summons issued to one of the accused Vasanthakumar, is not very significant. The said summon is issued to some other person and not to the accused. Therefore, the said error in date have no relevancy to decide the guilt of the accused for possession of heroin and ganja which came to be seized from his possession.

13.As far as possession in this case is concerned, even though, <https://hcservices.ecourts.gov.in/hcservices/> admittedly the contraband was not seized from his physical possession, the culpable mental state regarding possession could be



inferred from the information given by the appellant leading to the recovery of the narcotic drug. Therefore, it is the burden of the accused to disprove his conscious possession. As pointed out earlier, unless the accused had conscious possess of the contraband buried deep in the sand and the same has been disclosed in the interrogation, the respondent could not have recovered it.

14.While holding so, it is to be pointed that the prosecution, except constructive possession of one kg of heroin and 3 kgs of ganja, has failed to prove the other charges namely conspiracy and attempt to smuggle the contraband to Srilanka. Therefore, the accused is liable to be held punishable only for the offence under Section 8(c) read with 20(b)(ii)(B) for constructive possession of 3 kgs ganja and for offence under Section 8(c) read with 21(c) for constructive possession of 1 kg of heroin, which were recovered from the sand deeply buried near Nalupanai.

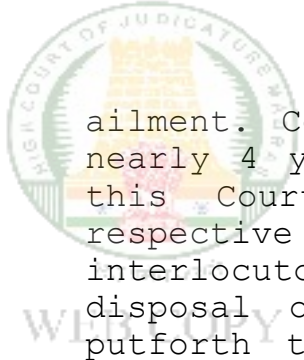
15.The prosecution evidence in respect of other offences is not sufficient to hold him guilty. Therefore, the finding of guilty, sentence and conviction made in C.C.No.93 of 2009 is liable to be set-aside.

16.Accordingly, this Criminal Appeal is partly allowed. The conviction passed against the appellant in respect of Sections 8(c) read with 20(b)(ii)(B) and 8(c) read with 21 punishable under Section 21(c) of the NDPS Act is confirmed. The conviction passed against the appellant in respect of Sections 8(c) read with 28 and 8 (c) read with 29 of the NDPS Act is set aside.

17.Regarding the sentence, the Trial Court has imposed the minimum period of imprisonment and fine as prescribed under the Act. Hence, there can be no modification in it. However, as pointed out by the learned counsel for the appellant, the default sentence for fine in respect of offence under section 8(c) read with 21 punishable under Section 21(c) of the Act, it is reduced to 10 days simple imprisonment from one year rigorous imprisonment. The default sentence for fine in respect of offence under Section 8(c) read with 20(b)(ii)(B) is reduced to 5 days simple imprisonment instead of 6 months rigorous imprisonment.

18.In the result, the period of imprisonment for substantive sentences of 10 years rigorous imprisonment for offence under Section 8(c) read with 21 of the Act and 3 years rigorous imprisonment for the offence under Section 8(c) read with 20(b)(ii)(B) is ordered to run concurrently. The default sentence for the fine amount Rs.1 lakh and Rs 10,000/- for the respective offences, is modified to 10 days simple imprisonment and 5 days simple imprisonment respectively. Consequently, connected CrI.M.P(MD) No.6521 of 2018 is closed.

19.While disposing the appeal as stated above, it is also necessary to record, pending appeal, the accused moved CrI.M.P(MD) No.6521 of 2018 for interim bail to take treatment for his heart



ailment. Considering the fact that the appeal being pending for nearly 4 years and the period of imprisonment nearing completion, this Court directed the learned counsels appearing for the respective side to advance arguments in the main appeal instead of interlocutory application, otherwise it may further delay the disposal of the appeal. Accordingly, the learned counsels have putforth their respective submissions and this court has passed final order in the appeal, allowing it partly.

20. Taking the above facts into consideration, the Prison Authorities are hereby directed to consider the health condition of the appellant/accused No.1 and forthwith provide necessary medical assistance in accordance with Prison Manual.

Sd/

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional District and Sessions Judge,
Special Court for E.C. Act,
Pudukkottai.

2. The Intelligence Officer,
NCB (Narcotic Control Board),
Chennai.

3. The Superintendent,
Central Prison,
Madurai.

4. The Special Government Pleader for NCB,
Madurai Bench of Madras High Court,
Madurai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6. The Record Keeper,
V.R. Section, (Criminal)
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+2cc to Mr.C.ARUL VADIVEL @ SEKAR, Advocate, SR.No. 89248, 90862

Cr1.A(MD)No.66 of 2014
and

Cr1.M.P(MD)No.6521 of 2018
15.10.2018

SMN

KK/SV/SAR-1/15.11.2018/6P-10C

<https://hcservices.ecourts.gov.in/hcservices/>