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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.A(MD)No.74 of 2016

Dayaram

: Appellant/ Accused

Vs.

State rep by
The Intelligence Officer,
Narcotics Control Bureau,
Regional Intelligence Unit,
Trivandrum
(NCB O.R.No.1/2008/NCB/RIU/TVM)

: Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure, to call for the records of the learned Special District Judge/II Additional Special Court for NDPS Act cases, Madurai in C.C.No.196 of 2009 and set aside the judgment and conviction dated 29.01.2016 and acquit the appellant.

For Appellant : Mr.S.Kanagarajan
For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor
for NCB Cases

JUDGMENT

The appellant herein has been found guilty for the offence under Section 8(c) r/w. 21(c) of NDPS Act by the Court below and sentenced to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default to undergo 2 ½ years simple imprisonment. Aggrieved by the conviction and sentence the present appeal is preferred.

2.The gist of the prosecution case is as below:

(i)Based on the specific information received by T.Gunabalan(P.W.1), Superintendent in NCB, Chennai on 06.09.2008 at about 10.30 a.m, he recorded the report under Section 41(2) of NDPS Act as told by the informer and contacted the Intelligent Officer Venugopal at Trivandrum and passed on the information to him.

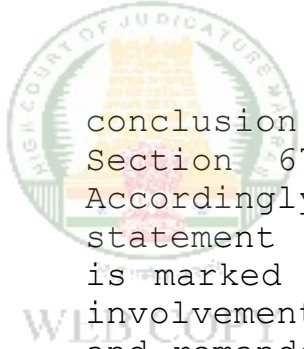


(ii) According to the information received over phone, one Umargul of Srilanka is indulging in trafficking of heroin between India and Srilanka through Kanyakumari coast with the help of Ronald Sathish @ Anand and Lal. Both Indians had procured one kilogram heroin from North India and the same is carried by one Dayaram resident of Mandsaur, Madhya Pradesh to Kanyakumari by bus from Chennai. The informant had revealed that Dayaram who is carrying the heroin will travel Kanyakumari by bus from Chennai and handed over the contraband to Ronald Sateesh @ Anand and Lal at Kanyakumari bus stand. The informant has also disclosed the vehicle description of Dayaram and the time and place where the contraband is likely to be exchanged.

(iii) On receiving the said information from T.Gunabalan (P.W.1), Venugopal, Intelligent Officer at Trivandrum Unit (P.W.7) at the team of NCB official from Trivandrum, left to Kanyakumari. With the help of Stalin Michael, Deputy Superintendent Police, took assistance of the police personnel and reached the Kanyakumari new bus station at around 04.00 p.m. P.W.7 was maintaining his surveillance along with his team members.

(iv) At about 6.45 hours when the SETC bus from Chennai arrived at the new bus stand, the accused Dayaram, whose description tallied with the information received earlier, got down from the bus bearing a dark blue colour office bag. He was apprehended by P.W.7 and after disclosing their identity he was enquired whether he was in possession of any narcotic drug. The accused Dayaram answered in affirmative. Therefore, he was taken to the nearby sitting facility at bus stand platform and after explaining the significance of Section 50 of the NDPS Act, 1985, he searched the bag carried by Dayaram the accused. Bag was checked. The bag contained seven compartments, out of which four were inside the bag, two on front portion and one on back side. The polythene cover containing light Coloured brown power was concealed. Two pockets of polythene cover containing light Coloured brown powder were concealed in two of the compartments and stitches were ripped open by the accused person voluntarily and handed over to P.W.7. The pocket was weighed and found approximately 500 grams each. The small portion of brown coloured powder from each of the pockets were drawn and tested with field testing kit separately, the same answered positive to heroin narcotic drug. Three samples of five grams each were drawn from two pockets and sealed separately and marked as S1 to S6. The two pockets containing remaining 485 grams each were stitched and sealed with NCB. The contents were marked as P.1 and P.2.

(v) Thereafter, the articles found in possession of the accused were recovered and kept in separate bag and sealed. Mahazar was drawn in the spot and the same was read over to the accused. The signature was obtained in the Mahazar. After



conclusion of the proceedings, the accused was summoned under Section 67 of NDPS Act, to appear and give his statement. Accordingly, the accused gave his voluntarily statement. The statement of the accused in Hindi along with English translation is marked as Ex.P.33. Having material to reasonably believe the involvement of the accused in trafficking heroin, he was arrested and remanded to Judicial custody.

(vi) On further investigation, P.W.7 has submitted the report to his immediate superior under Section 15 of NDPS Act and the same has been received by Shri C.Radhakrishna Pillai, Superintendent, NCB, who has been examined as P.W.6. The samples drawn from the heroin seized from the accused was submitted to chemical analysis. Mr.Srikanth, Intelligent Officer, had received the sample along with the request letter from the Court, submitted the same for chemical analysis to the chemical examiner on 09.09.2008. Later the report was forwarded to the Court, which had disclosed that the contraband containing Dayaram narcotic drug with trade name heroin. The said analysis report was marked as Ex.P.13 through Karthikeyan (P.W.5), Chemical Examiner.

3.The trial Court has framed the charges against the appellant/accused for the offence under Sections 8(c) r/w. Sections 21, 8(c) r/w. Sections 28 and 8(c) r/w. Sections 29 of the NDPS Act, since the report filed by the investigation agency reveals that this appellant/accused conspired with the absconding accused Ronald Sateesh @ Anand and Lal @ Lal Kumar to transport the heroin from India to Srilanka via Kanyakumari.

4.To prove the charges the prosecution has examined seven witnesses and 44 exhibits and 30 material objects were marked.

5.The trial Court considering the evidence let in by the prosecution has held that the prosecution has proved the guilty beyond reasonable doubt. The specific information received by Gunabalan (P.W.1) has been passed on to the Intelligent Officer at Trivandrum for necessary action and based on the said information the accused has been intercepted at Kanyakumari bus stand and the contraband has been seized from his possession. The confession statement of the accused implicating himself and the other absconding accused has been taken into consideration by the trial Court. The non-examination of the bus conductor in which the accused travelled from Chennai to Kanyakumari, held to be not fatal to the case of the prosecution,

6.Pointing out the suggestion put to the witnesses by the defence in the cross examination that the accused has come to Kanyakumari from North India as a tourist, Thangaraj (P.W.-4), Sub Inspector of Police, attached to the Suchintharam Police Station has corroborated the evidence of P.W.7 regarding his surveillance at the bus stand, pursuant to the information received, recovery



of contraband from the accused and his confession.

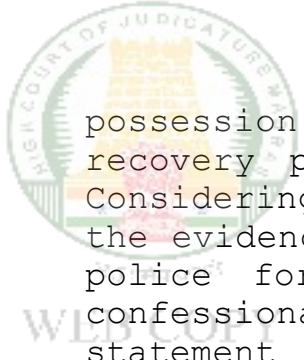
7. Taking note of the evidence let in by the prosecution and the law laid down by the Court below regarding the presumption under Section 35 of NDPS Act and the evidentiary value of statement of the accused given to NCB official, the trial Court has held that the prosecution has proved possession of one kilogram of heroin by the accused person. The trial Court has held that the charge of conspiracy with other the accused and charge of attempt to transport the heroin out side India has not been proved.

8. Having held the accused guilty of offence under Section 8 (c) r/w Section 21 of NDPS Act for possessing one kilogram heroin which is a commercial quantity, the trial Court sentenced the accused to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- which is a minimum sentence prescribed under the law. Further, the trial Court has imposed a default sentence of 2 ½ years simple imprisonment. Aggrieved by that, the present criminal appeal is preferred by the appellant.

9. In the appeal, the learned counsel for the appellant would submit that P.W.1 who has received the specific secret information, has not forwarded the same to his higher official as per the Section 42(b) of the NDPS Act. Therefore, the sentence has to be set aside for non-complying the mandatory provision. Further non-examination of bus conductor in which the accused travelled from Chennai to Kannyakumar, is contended to be fatal for the prosecution case. The independency and impartiality of P.W.4 Sub Inspector of Police attached to Suchindaram Police station also questioned by the appellant. Non- indicating the fact of arrest to the family members, failure to take photograph of the accused on the contraband, non-protection of the contraband immediately to the Court and failure to comply with Section 15 of the NDPS Act to the letter and spirit are the other grounds raised by the appellant.

10. Per contra, the learned Special Public Prosecutor representing for NCB would submit that Gunabalan (P.W.1) who has received the information, had passed on the same to his unit at Trivandrum, since further action could be taken only by the Officer at Trivandrum due to proximity. However, P.W.7 has re-recorded the information and passed on the information to his immediate superior Radhakrishnan, Superintendent of NCB, in charge of Trivandrum unit. Therefore, there is no violation of Section 42(b) of the NDPS Act.

11. Regarding the seizure of contraband the learned Special Public Prosecutor would submit that the information received through the informant had tallied with the physical features of the accused. When he was interrogated he was conceded the



possession of the narcotic concealed in the bag. The entire recovery proceedings has been witnessed by P.W.4 local police. Considering the gravity of offence and the nature of the offence, the evidence of P.W.4 cannot be doubted just because he belongs to police force. The statement given by the accused which is confessional in nature, is admissible in evidence since the statement is given to Revenue Official. The trial Court has rightly convicted the accused and the conviction needs no interference.

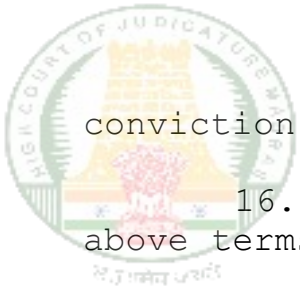
12. The point for consideration:-

"Whether the Court below has failed to properly appreciate the evidence let in by the prosecution?"

13. The seizure of one kilogram of heroin which is a commercial quantity, is the result of joint operation and ever made by Chennai unit of NCB and Intelligent Officer attached to Trivandrum unit. P.W.1 on receiving a cigarette information over phone recording illicit transport of heroin through the accused, has reduced the information in writing and passed on to the Officer at Trivandrum for effective action. Ex.P.1 is the information recorded by P.W.1, Superintendent, NCB at Chennai Unit. He has passed on the information to Trivandrum unit which has been received by Srikanth (P.W.2). He has forwarded the report under Section 42, to his immediate superior Radhakrishnan (P.W.6) and that report is marked as Ex.P.14. After seizure and arrest of the accused at Kanyakumari bus stand, P.W.2 has forwarded his report under Section 57 to his immediate superior Radhakrishnan and same has been marked as Ex.P.15. Both the documents are marked through Radhakrishnan, who is coordinated the investigation subsequent to the arrest of the accused. He has written the letter to Cellcom Office at Madhya Pradesh, Reliance Infocomm at Chennai and Vodafone Essar Ltd, to verify call details and travel details of the accused. Since the statement of the accused coupled with recovery of contraband which is proved to be heroin and narcotic drug, the Court below has found the accused guilty for possessing heroin weighed one kilogram and for other charge the Court below has rightly acquitted for want of proof.

14. On cumulative assessment of the evidence available before this Court, this Court finds no ground to interfere the finding of the trial Court.

15. The learned counsel appearing for the appellant would submit that the accused has almost completed his term of imprisonment and due to his poverty he is not in a position to pay the fine of Rs.1,00,000/-. Therefore, requested to reduce the default sentence considering his age, poverty and long service in the prison. This Court on considering the said plea modify the default sentence from 2½ years to 30 days simple imprisonment. Accordingly, this Court while confirming the



conviction modify the default sentence alone as above.

16. In the result, this Criminal Appeal is partly allowed on above terms.

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Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Special District Judge/II Additional Special Court for NDPS Act cases, Madurai.
2. The Intelligence Officer,
Narcotics Control Bureau,
Regional Intelligence Unit,
Trivandrum.
3. The Superintendent,
Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No.88765

CP

TE/SV/SAR-2 : 22/11/2018 : 6P/8C

JUDGMENT MADE IN
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