

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1696 of 2007

JUDGMENT:

This appeal is preferred by the appellant, against the judgment of the I Additional Sessions Judge, Warangal in S.C.No.343 of 2003 dated 05.12.2007, convicting and sentencing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- in default to undergo further imprisonment for a period of 2 ½ years for the offence punishable under Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act').

2. The facts of the case, briefly, as per the charge sheet are as follows:

On 17.04.2003, L.W.1 received information that some of Devannapet villagers are doing Ganja smuggling. On that, L.W.1 informed the same to the superior officers and made GD entry and proceeded to the outskirts of the Devannapet with L.Ws.2 to 5, where L.W.1 apprehended the accused and found 3 gunny bags and 1 plastic bag containing Ganja (dry). L.W.1 secured the presence of L.Ws.7 and 8 and interrogated the accused. The accused revealed his name as Suram Ravinder Reddy S/o. Malla Reddy. Immediately L.W.1 sent a requisition to the MRO, Hasanparthy with a request to visit the scene of offence for conducting panchanama. The MRO came to the spot where L.Ws.1 and 9 enquired the accused. On enquiry, the accused stated that he harvested Ganja and the same was cleaned and packed in 3 gunny bags and 1 plastic bag, which is in total 44 Kgs 200 gms in

order to sell the same at Maharashtra at Rs.1,000/- per Kg. While he was waiting for conveyance at the outskirts of Devannapet village, L.W.1 and his party apprehended him and handed over to the SHO, Hasanparthy under cover of panchanama. Based on the panchanama, a case was registered in Cr.No.55 of 2003 under Section 8(c) read with 20 of the NDPS Act.

3. The accused was charged for the offence under Section 8(c) read with 20 of the NDPS Act and was tried. P.Ws.1 to 5 were examined, Exs.P1 to P8 and Exs.X1 and X2 were marked on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, when he was questioned under Section 313 Cr.P.C, which he denied and filed a written statement and reported no evidence on his behalf.

4. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following grounds:

The Court below ought to have seen that the G.D extract was not filed along with the charge sheet and it was filed at a belated stage after recalling the witness; it erred in ignoring the discrepancies in the evidence of P.Ws.1, 2 and 5 with regard to the number of samples taken; it ought to have seen that the evidence of P.W.2 would indicate that he had already opened and searched the bags, even before the MRO and the independent witnesses arrived at the scene and it erred

in holding that the provisions of Section 42 of the NDPS Act were substantially complied with and even otherwise Section 42(1) will not apply to the facts of the case. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

5. Heard the learned counsel for the appellant and the learned public prosecutor appearing for the respondent.

6. The counsel for the appellant contends that the officials failed to comply with the mandatory provisions of the Act, which would vitiate the prosecution. He relied on a decision of this Court in *SINGARASU VENKAYAMMA v. STATE, EXCISE INSPECTOR*¹ wherein it was held that compliance of Section 42 of the NDPS Act is mandatory when search is conducted on the basis of the information received by Excise officials, which shall be reduced into writing. He also relied on a decision of the Supreme Court in *STATE OF PUNJAB v. BALBIR SINGH*² wherein it was held that Section 50 of the NDPS Act is mandatory and it is obligatory on the part of the officers to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the gazetted officer or the magistrate, would amount to non-compliance of Section 50 of the NDPS Act which is mandatory. The counsel submits that in this case nowhere in the proceedings it is recorded that the accused was appraised of his right to be searched before a gazetted officer.

¹ 1991 (1) ALD (CRL.) 935 (AP)

² AIR 1994 SC 1872

7. That apart the facts of the case would show that there was prior information with regard to the transportation of Ganja. The evidence of P.W.2 would speak about the said fact. According to his evidence, on 17.04.2003, he had reliable information about transportation of Ganja near Devannapeta village and he came to the spot along with his staff, after informing his superior officers and after making a GD entry. But he does not say that he reduced the said information into writing and forwarded the same to his superior as mandated by Section 42 of the NDPS Act. The mandatory provisions of the Act are incorporated in order to plug in false implications and violation of such mandatory provisions would prejudice the accused. The Investigating Officers are not supposed to take the mandatory provisions lightly. The importance of complying with the said mandatory provisions is being continuously highlighted by the Courts time and again and in spite of it the officers fail to comply with the provisions, as it happened in this case also.

8. Though the evidence of P.W.1, who is the mediator, shows that the Ganja was seized from the accused and it weighed 400 KGs, the details of the weighment are not stated by him. The weight of the contraband is an essential requirement for awarding appropriate punishment. Unless the said fact is proved beyond all reasonable doubt, it cannot be said that the weight of the contraband, as stated by the witnesses, is true and correct. The NDPS Act prescribes different punishments for various weights of contraband. Hence, the prosecution seems to have failed in proving the weight of the contraband and also in complying with the mandatory provisions of the

NDPS Act. Hence, in view of the above, this Court opines that the judgment of the Court below cannot be sustained.

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accused in S.C.No.343 of 2003 dated 05.12.2007 by the I Additional Sessions Judge are set aside. The appellant-accused is acquitted of the offences under Section 8(c) of the NDPS Act and he shall be set at liberty forthwith, if he is not required in any other case.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

September 25, 2018
DSK



T. RAJANI, J