IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.767 of 1998

Lakshmi ... Appellant/Accused

Vs

State rep. by
Inspector of Police,
N-2 Kasimedu Police Station,
Chennai.
Cr.No.4123/91 ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the conviction and sentence passed in C.C.No.215/93 by the learned Special Judge for NDPS Act (Addl.) Chennai.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : M/s.Thankira
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the judgment of conviction and sentence passed by the learned Special Judge for NDPS Act (Additional Court) wherein the learned trial Judge convicted and sentence the appellant/accused for the offences under section 8(c) r/w 20(b) of NDPS Act to undergo 3 years rigorous imprisonment and fine of Rs.3,000/- in default to undergo 9 months simple imprisonment in C.C.No.215 of 1993 dated 21.08.1998.

2.Brief case of the appellant/accused is that:

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The prosecution case is that the Sub Inspector of Police N2 Police Station on 30.11.1991 at about 22.30 hrs, with his police party went to the junction of I.D.D.H. and Adi Dravida street and found that the appellant/accused standing near the said junction with a cloth bag and that on seeing the police party the accused tried to escape from the said place and he was surrounded in the presence of two private witnesses and examined the cloth bag and found 3 Kg. of ganja in it and since the accused had no valid permit or license to possess the same, the Sub Inspector of Police arrested the appellant/accused and produced him before the Assistant Commissioner of Police, Royapuram Range along with the private witnesses at 23.00 hrs. The property was recovered from the appellant/accused in the presence of private witnesses and in the presence of Assistant Commissioner of Police Royapuram Range under a mahazar and afterwards the Sub Inspector of Police produced the appellant/accused and property before the Inspector of Police N2 Kasimedu police station, who had registered a case in N2 Cr.No.4213 of 1991 under section 8(c) r/w 20(b) of NDPS Act.

3.The learned trial Court framed the charges against the appellant/accused under section 8(c) r/w 20(b) of NDPS Act. The appellant /accused denied the charges.

4.During the trial, the prosecution examined PWs-1 to 6, marked Exhibits-P1 to P8 and MO1 were marked. No witnesses marked on the side of the appellant/accused.

5.PW1 the seizure officer in his evidence has stated that on 30.11.91 at 22.00 hrs, when he was in his routine patrol duty along with his police party, he saw the accused took to her heels on seeing the police party was chased and intercepted near I.D.H. and Adi-Dravidar Street Junction and that the accused produced a ganja packet from her possession and that he produced the accused at 23.00 hrs. before the Assistant Commissioner of Police, Royapuram range with a special report under Ex P2 and that the Assistant Commissioner of police after enquiry seized the contraband from the accused under mahazar Ex.P3 in which he had signed as a witness.

6.PW2 is the chemical analyst who analysed the seized contraband relating to this case which was sent to him along with the letter of the learned VII Metropolitan Magistrate, Chennai in R.O.C.A.No.365 of 1991 dated 02.12.1991 and that the contraband was in polythene bag weighed 2.500 kilos and the contraband found in cloth bag weighed 1.315 kilograms and the

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contraband sent in another cloth bag weighed 400 grams and that he analysed the contraband and found the presence of "Canabinoids' in all the three contrabands, which is Ganja. Ex-P4 is the chemical analyst's report. M.O.1 is the remanents.

7.PW3 and PW4 are the mahazar witnesses. But they have not supported the case of the prosecution and hence they have been treated as hostile witnesses by the learned Public Prosecutor. Both the PW3 and PW4 have admitted their signature in Ex.P3 mahazar as Ex-P5 and Ex-P6 respectively. They would say that they do not know the contents of Ex.P3 mahazar.

8.PW5 the Inspector of Police would depose that on 30.11.1991 at 22.30 hrs while he was in charge of Kasimedu police station, the Sub Inspector of Police PW1 produced the accused along with 5 kgs. of Ganja and a special report and that he registered a case in Cr.No.4123 of 1991 under section 8(c) r/w 20(b)(i) NDPS Act. Ex.P7 is the First Information report and Ex. P 8 is the requisition letter for sending the contraband for chemical analysis.

9.PW6 is the then Assistant Commissioner of Police Rayapuram Range, who would depose that on the basis of the information received by him through telephone, he instructed Sub Inspector of Police, N2 Kasimedu Police station to take action and that on 30.11.1991 at about 23.00 hrs, the said S.I, of police produced the accused along with witnesses Mariappan and Murugesan and the accused was in possession of 5 Kgs. of ganja and the said contraband was seized by him under mahazar and that he took up further investigation and the charge sheet was filed by his successor.

10.The learned trial Court appreciated the case of the prosecution through PW1, PW2, PW5, PW6 and Exhibits-P1 to P8, convicted and sentenced the appellant/accused to undergo imprisonment for 3 years rigorous imprisonment and fine of Rs.3,000/- in default to undergo 9 months simple imprisonment.

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11.After the trial, on appreciating the material available on record the trial Court convicted the appellant/accused for the offences under section 8 (c) r/w 20(b) of NDPS Act.

12.Aggrieved over the same, the appellant/accused preferred this criminal appeal.

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13.The learned counsel for the appellant/accused submits that the learned judged failed to note the evidence of the Assistant Commissioner and the seizure officer would show that seizure was only on information.

14.The learned counsel for the appellant/accused submits that the property has so seized was not produced before the remanding Magistrate, only after 3 days delay it was produced before him.

15.The learned counsel for the appellant/accused submits that the learned judge failed to note that the contraband seized was not sealed on the spot and that there is no evidence to that effect.

16.The learned counsel for the appellant/accused submits that the learned judge failed to note that no option was given to her about effecting search either before gazette officer or nearest Magistrate and the appellant is a lady was not searched by a female.

17.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

18.I heard Mr.R.C.Paul Kanagaraj, learned counsel for the appellant and M/s.S.Thankira, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

19.In the case of hand, the learned trial judge failed to appreciate the mandatory violations made by the respondent police while following the procedures under section 41(2), 50 (1), 50(4) and 57 of NDPS Act. Even though the trial Court and the respondent/complainant admitted the fact that the provision under section 50 of NDPS act was not followed, the non-failure will not affect the recovery made in this case.

20.As a matter of fact, the evidence of PW1 shows that the seizure was effected as per Exhibit P1 in a chance recovery and the appellant/accused produced the ganja to PW6. But it is seen from the evidence of PW1 that as per the information received,

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he interrogated appellant/accused. Hence there is no question of chance recovery and the respondent ought to have followed the provisions under section 50 of the NDPS act. Further the recovery of Ganja cannot be termed as a chance recovery and non-failure of following the provisions under section 50 of NDPS Act is fatal to the prosecution.

21.It is also seen from the evidence that, Exhibit P3 mahazar is silent about the affixture of the seizure by PW 1 over the contraband and the provision under section 57 of the NDPS act was not followed. Therefore the prosecution miserably failed to prove the mandatory procedures and guidelines to be followed by them while effecting seizure and arrest.

22.The learned trial Court failed to appreciate the mandatory provisions envisaged in the NDPS act while appreciating the evidences let in by the prosecution.

23.In the result,

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant in C.C.No.215 of 1993 dated 21.08.1998, on the file of the learned Special Judge for NDPS Act (Additional) Chennai, is set aside.

b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellant/accused is stands cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Special Judge for NDPS Act (Addl.) Chennai.

2. The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai.

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3. The Public Prosecutor,
High Court, Madras.

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