

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1149 of 2004

Intelligence Officer
Narcotics Control Bureau, South Zonal Unit,
C3A, Rajaji Bhawan
Besant Nagar, Chennai - 600 090.
(F.No.48/1/15/2002/NCB/MDS) ... Appellant

Vs.

1.Ranjit Singh Chauhan @ Mansingh
2.Kalu Singh
3.Karan Singh
4.Mohammed Saheed Mohammed Ismath (Sri Lankan)
5.S.Kugadas @ Das, Sri Lankan
6.K.Ravindra Kumar @ Ravi, Sri Lankan ... Respondents

Prayer:

Appeal filed under Section 378 of Cr.P.C. seeking to set aside the judgment dated 30.08.04 in C.C.No.102/03 of the Additional Special Court for NDPS Cases, Chennai 600 104, convict and sentence the accused in accordance with law.

For Appellant : Mr.N.P.Kumar
Special Public Prosecutor
for NCB Cases

For Respondents: Mr.R.Rajarithnam

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 30.08.2004 in C.C.No.102 of 2003 of the Additional Special Court for NDPS Cases, Chennai 600 104, to convict and sentence the accused in accordance with law.

2.The learned Special Public Prosecutor for NCB Cases would submit that this is an appeal against acquittal. He would further submit that three of the respondents herein are Sri Lankan citizens and the rest are North Indians and would further

submit that the appellant is not able to effect service of notice on the Sri Lankan respondents and hence, it is not possible to conduct the appeal and would further submit that this Court may close the appeal for non service of notice.

3.The appeal is of the year 2004 and till date notice was not served on some of the accused. Considering the pendency of the appeal, this Court has no other option except to proceed with the appeal on merits.

4.Perusal of records disclose that A1 to A9 have entered into criminal conspiracy at Srilanka, Madhyapradesh, Kilakarai during the year 2002 out of which 15.350 kgs. of heroin came to be seized on 22.09.2002; that A1 has procured the seized contraband and has been assisted by A2 and A3 in carrying the said narcotic drug from Madhyapradesh to Chennai as per requisition of A5 who has been introduced to A5 by A8 and A9 who are in Central Prison, Bangalore; that A1 along with A2 and A3 would deliver the contraband to A4 who has arranged for finance of seized narcotic drugs; that A4 has to carry the contraband from Chennai to Sea Coast of Tamilnadu (Keelakarai) who inturn has taken the assistance of A6 for the same; that as per the statement of A4, A7 who has already been involved in transport of narcotic drugs would receive the contraband at Kilakarai and for onward transport to Srilanka and A7 has also finance the seized narcotic drug to A4; that as per the statement of A8 and A9, they have conspired with A1 and A5 to procure the contraband from Madhyapradesh and that the contraband of 15.350 kgs. of heroin came to be seized at V.I.P.Vehicles parking area at Central Railway Station on 22.09.2002. Accordingly, they have committed an offence punishable under Sections 8 (c) r/w.21(c), 27(A), 28 and 29 of NDPS Act.

5.Perusal of records further disclose that initially complaint was filed against A1 to A9 and since A8 and A9 were in judicial custody at Bangalore and were not produced before the lower Court, the case against A8 and A9 were split up as C.C.No.252 of 2003.

6.Inorder to prove the prosecution case, the prosecution examined witnesses P.W.1 to P.W.13 and marked exhibits Ex.P.1 to Ex.P.87 and material objects M.O.1 to M.O.45 were marked. On the side of defence D.W.1 to D.W.3 were examined and no exhibit was marked. After trial, the Trial Court acquitted the accused, against which, this appeal has been preferred.

7.In dealing with matters, where the acquittal rendered by the Trial Court is put to test, it is trite that unless the order of the Trial Court suffers from the vice of perversity, the High Court ought not to interfere with the said order. In

Shailendra Pratap and another vs. State of U.P. (2003 (1) SCC 761), the Hon'ble Supreme Court has categorically held that the appellate Court would not be justified in interfering with the order of acquittal unless the same is found to be perverse, the relevant portion of which is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

8. Yet again, in Ram Kumar vs. State of Haryana (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the Trial Court and has further held that if the view taken by the Trial Court is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Hon'ble Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of

accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.”

9. Keeping the above principles of law laid down by the Hon'ble Supreme Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the Trial Court for acquitting the accused/ respondents herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the Trial Court are such which could not have been possibly be arrived at by any Court acting reasonably and judiciously, which could in turn be said to be perverse.

10. Perusal of records disclose that as per the prosecution evidence the Intelligence Officers went to the spot from the office by their office mini bus and after surrounding the accused, they were brought into the mini bus which was stationed in the VIP parking area and search and recovery proceedings were taken inside the mini bus. In the complaint filed by P.W.11, the said facts has not been mentioned. Except P.Ws.1, 3 and 4, other witnesses had deposed that they went to the spot in the mini bus and except P.W.6 other witnesses have not deposed the registration number of the said vehicle.

11. Perusal of records further disclose that all Government Offices have to maintain the log book for the use of office vehicle. The said log book would reveal the particulars as to what date and what place the said vehicle has been plied. P.W.3 in his cross-examination has admitted that he did not remember the name of the driver who has driven the vehicle on 22.09.2002; that he did not know the maintenance of log book for the said vehicle. P.W.4 in his cross examination, has admitted that there is a log book for the said vehicle, but P.W.5 denied the maintenance of log book in the office. P.W.6 also denied that there is no register for maintaining the petrol consumption account. He also admitted that reaching the occurrence place through mini bus is not mentioned in any document filed in this case.

12. Perusal of records further disclose that the driver who has driven the said vehicle has not been cited as witness in this case. If the said log book of the mini bus was produced,

it would reveal whether the same has been plied or not from NCB office to Central Railway Station on 22.09.2002. The non-production of the said log book create a doubt regarding the arrival of all persons at the Central Railway Station through office mini bus.

13.Further, the Trial Court has observed that the prosecution has not followed the mandatory provision contemplated under Section 50(i) of the NDPS Act. The Trial Court has further observed that due to non compliance of Section 52(A) of the NDPS Act, there is every possibility of tampering the contraband and further observed that non compliance of Section 57 of the NDPS Act would also affect the case of the prosecution. The Trial Court further observed that due to non maintenance of Diary, the Court was not able to call for the records and verify the same with the particulars or evidence deposited by P.Ws.1, 3 to 7 and also observed that the prosecution has not followed the principles mentioned in D.K.Basu's case.

14.The Trial Court acquitted the accused on the ground that the prosecution has not proved the charges against the accused beyond all reasonable doubts and not followed the various mandatory provisions contemplated under the NDPS Act and the benefits arising out of such doubts are entitled by the accused and the same has been awarded to them.

15.In view of the above discussions and decisions, this criminal appeal is dismissed and the judgment dated 30.08.2004 made in C.C.No.102 of 2003 by the Additional Special Court for NDPS Cases, Chennai 600 104, is hereby confirmed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1.The Additional Special Court for NDPS Cases,
Chennai 600 104.

2.Intelligence Officer
Narcotics Control Bureau, South Zonal Unit,
C3A, Rajaji Bhawan
Besant Nagar, Chennai - 600 090.

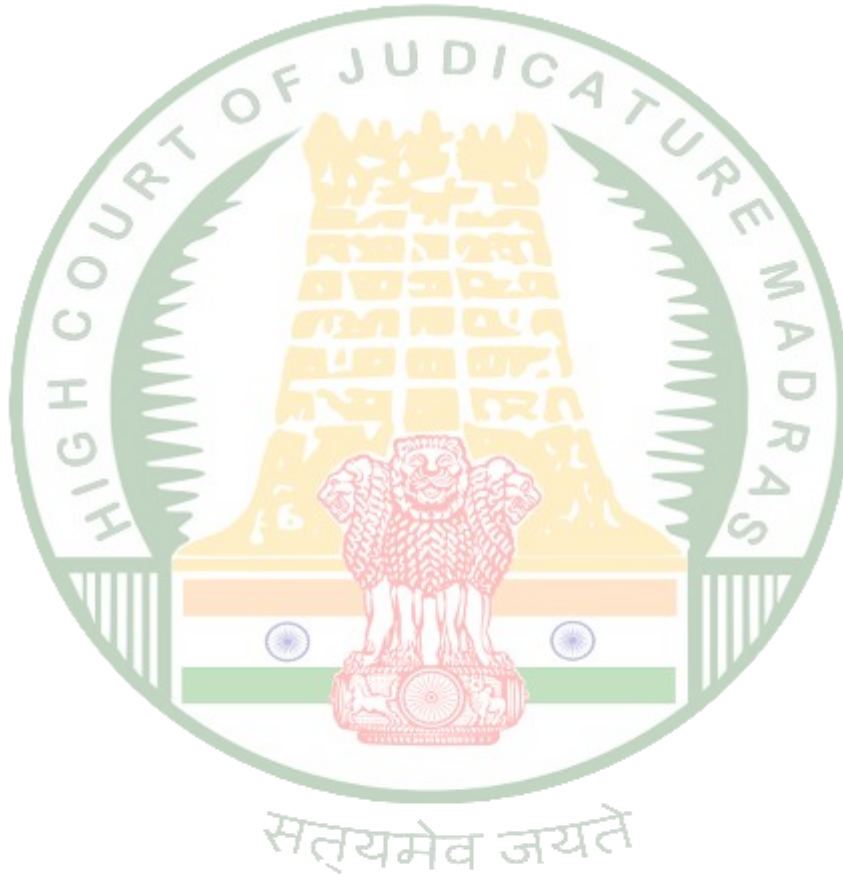
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3.The Special Public Prosecutor,
NCB Cases, High Court, Madras.

+1cc to Mr.R.Rajarathinam, Advocate, SR.No.103061.

Cr1.A.No.1149 of 2004

BS (CO)
CSR: 10.01.2020



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