

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 30.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.No.17 of 2018

Abdul Rahim

... Appellant

Vs.

The Intelligence Officer
Directorate of Revenue Intelligence,
Chennai.

... Respondent

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure seeking to set aside the judgment of conviction and sentence passed by the learned II Additional Special Judge for NDPS cases, Chennai, made in C.C.No.22 of 2015 dated 12.12.2017.

For Appellant : Mr.C.S.S.Pillai,
Legal Aid Counsel
For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor.

Judgment

This criminal appeal has been filed against the judgment of conviction passed by the learned II Additional Special Judge for NDPS cases, Chennai, made in C.C.No.22 of 2015 dated 12.12.2017.

2 According to prosecution, on 08.09.2014, P.W.1 G.Jayaprakash, received information over office phone that one Abdul Raheem is indulging in drug trafficking and at present he is in possession of 10 Kgs of white colour substances Methaqualone Psychotropic substances covered under Narcotic Drugs and Psychotropic Substances Act, 1985, (for brevity " the NDPS Act"). He reduced the same into writing and submitted to P.W.2. P.W.2 along with team of officials, went to house of the appellant/accused and made search and found two polythene covers containing white colour crystal powder kept in a shopper bag. On inquiry, the appellant informed that the white powder is Methaqualone given by one Gazaly and that white crystal powder has to be packed in transparent white plastic cover and then the same has to be concealed in two side of jewellery purse. The team of officials tested the white crystal powder and it answered positive for Methaqualone a Narcotic Psychotropic substance covered under NDPS Act, which was totally weighing 10.105 Kgs of Methaqualone and three samples of 5 grams each were drawn and kept in packet sealed with DRI seal and got

signatures of two independent witnesses. After completing all the procedures, the respondent police has filed a complaint before the Special Court and the same was taken on file in C.C.No.22 of 2015 by the learned II Additional Special Judge for NDPS Cases, Chennai.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P24 were marked along with Material Objects 1 to 9. On the side of the defence, no one was examined and no document was marked.

4 The learned Special Judge, after trial, found the accused guilty of offence punishable under Sections 9(A) r/w 25-A, 9(A) r/w 25 & 9(A) r/w 28 of NDPS Act, 1985, and by judgment dated 12.12.2017, convicted him and sentenced to undergo rigorous imprisonment for a period of 5 years and to pay fine of Rs.50,000/- for each of the offences stated above, in default, to undergo rigorous imprisonment for further period of one year.

5 Aggrieved against the judgment of conviction dated 12.12.2017, the convict had preferred this present criminal appeal before this Court.

6 According to learned counsel for the appellant/accused, Section 50 of NDPS Act has not been complied with and the appellant was not given proper opportunity to prove his innocence. In the complaint filed by the prosecution, there were many address of the appellant and there is no proof to show that the appellant residing in the address, where the alleged contraband has been recovered. Prosecution has failed to examine any independent witnesses and it has also failed to examine the relatives, who were present in the house at the time of recovery of contraband. The trial Court ought not have convicted the appellant solely on the basis of the confession made by the appellant accused. The prosecution has failed to prove the alleged recovery in the manner known to law. The trial Court had failed to consider all the above aspects and erroneously convicted the appellant/accused, which warrants interference and therefore, the appellant is entitled for acquittal.

7 The learned Special Public Prosecutor appearing for the respondent police would submit that P.W.1, who was working as DRI, soon after receiving the secret information about the illegal possession of contraband by the appellant/accused, reduced the same into writing and submitted to P.W.2, who was working as Intelligence Officer in DRI. P.W.2 along with team of officials went to house of the appellant and made search and recovered 10.105 Kgs of Methaqualone. If the search was conducted on the body of the accused, then only Section 50 of

NDPS Act has to be complied with, whereas, in this case search was conducted in the house of the appellant, after obtaining necessary search warrant and not on the person. In support of the above contentions, the learned Special Public Prosecutor has relied on the decision of this Court reported in 2018 MLJ (Cri) 553 (Shri Krishnan Sridaran Rajendran @ Krishnan Seedaran Rajendran @ Madan vs. The Intelligence Officer, Directorate of Revenue Intelligence, Chennai). The respondent police has obtained signatures of the independent witnesses in the Mahazar/Ex.P2 and since summons sent to their address for giving evidence was returned as unserved, prosecution could not examine the Mahazar witnesses. But, it is to be noted that the appellant/accused himself in his evidence and statement recorded under Section 67, has stated that he has been residing in the address, where the contraband recovered and how he was in possession of the contraband. From the above, it is clear that Section 50 does not arise in this case and question of different address in the complaint has been answered clearly from the statement recorded under Section 67 of NDPS Act from the accused. Hence, the trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellant, which does not call for any interference.

8 Heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

9 It is the main contention of the learned counsel for the appellant that Section 50 of the NDPS Act has not been complied with and the trial Court convicted the appellant solely on the basis of the confession made by the appellant. It is seen that Section 50 will apply only for the search conducted on person and it speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Therefore non-compliance of Section 50 of the NDPS Act will not apply to the present case on hand. In the authority cited by the learned Special Public Prosecutor, it has been clearly held that for the search conducted on other than person i.e. bag or any instrument, Section 50 will not apply. On reading of the statement recorded under Section 67 of NDPS Act from the appellant would clearly show that he himself admitted that he has been living in the address, where the recovery has been made, for the past two years. In the statement, the appellant also stated that how he was in possession of the recovered contraband. The above statement has been given voluntarily by the appellant/accused and hence the same can be taken as evidence for conviction. On reading of evidence of P.W.1 to P.W.5, this Court find that the appellant committed offence as concluded by the trial Court.

10 On a careful perusal of the judgment of conviction made by the Court below, it reveal that the trial Court has given cogent and convincing reasons for the conviction and this Court does not find any illegality or perversity to interfere with the same. In the result, the criminal appeal is dismissed as devoid of merit and substances and judgment of conviction and sentence dated 12.12.2017 made in C.C.No.22 of 2015 by the learned Special Judge (FAC) Court of Special Judge, II Additional Special Court under NDPS Act, Chennai, is hereby confirmed.

11 While parting with the case, this Court appreciate the service rendered by Mr.C.S.S.Pillai, learned counsel who argued on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay the remuneration as per rules.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

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To

1. The II Additional Special Judge for NDPS cases, Chennai.
2. The Intelligence Officer,
Directorate of Revenue Intelligence, Chennai.
3. The Public Prosecutor, High Court of Madras.
4. The Member Secretary,
Tamilnadu State Legal Service Authority, Chennai.

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VD (CO)
CSR(18/12/2019)

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