

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.459 of 2011

S.Loganathan @ Nathan @ Vibhishanan @ Kutty

... Appellant/Accused

-Vs-

State rep. by
Intelligence Officer,
South Zonal Unit,
NCB.F.No.48/1/2/2003 NCB-MDS
Chennai.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 17.05.2011 made in C.C.No.259 of 2003 passed by the learned Special Judge, First Additional Special Court under NDPS Act, Chennai.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.N.P.Kumar
Spl.Public Prosecutor for NDPS Act.

J U D G M E N T

This appeal has been filed to set aside the judgment dated 17.05.2011 made in C.C.No.259 of 2003 passed by the learned Special Judge, First Additional Special Court under NDPS Act, Chennai.

2. The case of the prosecution is that on 14.03.2003 at about 9.00 hours PW-2/Intelligence Officer received an information over phone that one Kutty @ Loganathan @ Nathan, Srilankan, had gone to Ahamedabad along with one Jayandran @ Jaya @ Jayakumar and two others and procured about 6 kilograms of heroin and concealed the said Narcotic Drug in two travel rexine bags in a house at Sakthi Nagar, Porur, Chennai. Further, he was informed that on 14.03.2003 that the two bags containing Narcotic Drug would be removed from the Sakthi Nagar area by the said Kutty @ Loganathan @ Nathan (A2) and Jayandran @ Jaya @ Jayakumar (A1) to deliver it to one Paven (A3) during

the day time. The said information was reduced into writing by PW-2 and he submitted the same to his immediate Superior Thiru.S.Gunabalan (PW-7), Superintendent. After getting permission from the Superior, PW-2 along with Police party, went to the said place and mounted surveillance. At about 3.00.p.m they noticed a auto coming from Sakthi Nagar towards main road and the passenger in the auto, was having blue and black rexine travel bags, matched with the description mentioned in the information. They stopped the auto and introduced themselves with their identity card. On enquiry, the passenger revealed his name as Jayaendran @ Jaya @ Jayakumar and PW-6 revealed the information to him and expressed their intention to search him and his belongings under NDPS Act. After introducing the witnesses, the right contemplated under Section 50 of NDPS Act was explained to the accused. He declined the offer and replied that the officer present may search him. He was enquired as to whether he is in possession of any Narcotic Drug. A1 admitted the possession of contraband and handed over a polythene cover from each bag concealed in the false bottom of the blue and black colour rexine bags and stated that it contained heroin. PW-6 received the same and opened and tested a small quantity with field test kit, which answered positive for heroin. PW-6 seized both the packets and weighed it separately, which was found to contain 3.080 and 6.430 totalling to 6.430 kilograms of heroin, which was recovered under a cover of mahazar. He took two samples of 5 grams from each bag and sealed it in separate cover. A case was registered against the present accused and 3 others for the offence under Section 8(c) read with 21(C), 23 (c), 27-A, 28 and 29 of NDPS Act as amended Act 9/2001. After completion of investigation, the Intelligence Officer, NCB [PW-11] laid a charge sheet in C.C.No.259 of 2003 before the First Additional Special Court for NDPS Act cases, Chennai against the accused persons.

3. In order to prove the case, the prosecution examined as many as 14 witnesses, marked 78 exhibits and 10 material objects. After completing the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses were put before the accused and they denied as false. On the side of the defence no evidence was produced. The learned First Additional Special Judge, after completing the trial, came to the conclusion that the appellant/A2 and 3 others have committed the offence under Section 8(c) read with 29, 21 (c), 23(c), 27-A and 28 of NDPS Act and sentenced him to undergo 10 years Rigorous Imprisonment for each offence and fine of Rs.1.00 lakh for each offence, in default 6 months Rigorous Imprisonment for each offence [Total fine Rs.5.00 lakhs i/d 30 months]. There against, the second accused has preferred the present appeal before this Court.

4. The learned counsel appearing for the appellant would submit that the contraband was seized from the first accused, not from the present appellant/A2. Though PW-2 received secret information, they have not complied the mandatory provisions under Sections 42(1), 50 and 67 of the NDPS Act. In the absence of any specific recovery from the appellant/A2, conviction of the appellant based on the confession statement of the co-accused recorded under Section 67 of NDPS Act not valid under law, which warrants interference.

5. It is seen that the appellant along with other accused procured about 6 kilograms of heroin and arrived at Chennai on 13.03.2003, which is concealed in two travel rexine bags at Sakthi Nagar and the same would be removed from there by one Kutty @ Loganathan @ Nathan (A2) and Jayandran @ Jaya @ Jayakumar to deliver it to one Pavan (A3). After getting permission from the superior, PW-2/Intelligence Officer proceeded to conduct raid at the place of occurrence. Before proceeding the seizure, the prosecution has complied the mandatory provisions of Section 50 of NDPS Act. There is no violation of the mandatory provisions of NDPS Act. The evidence of PWs-1 to 6 clearly shows about the occurrence and PW-14 witnessed the same. From the evidence of prosecution witness PW-1 to 14, this Court finds that the prosecution proved its case beyond reasonable doubts. Since the trial Court found that there was no procedural violation in this case, rightly convicted the appellant/accused.

6. Considering the facts and circumstances of the case and also from the oral and documentary evidences, this Court finds that there is no reason to interfere with the judgment of the trial Court.

7. In the result, this Criminal Appeal is dismissed and the judgment dated 17.05.2011 in C.C.No.259 of 2003 passed by the learned Special Judge, First Additional Special Court for NDPS Act, Chennai, is hereby confirmed. Since it is submitted by the learned counsel for the appellant that the appellant/A2 has already undergone the sentence imposed by the trial Court, there is no need to secure the custody of the appellant/A2.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Special Judge,
First Additional Special Court for NDPS Act,
Chennai-104.

2.The Intelligence Officer,
South Zonal Unit,
Chennai.

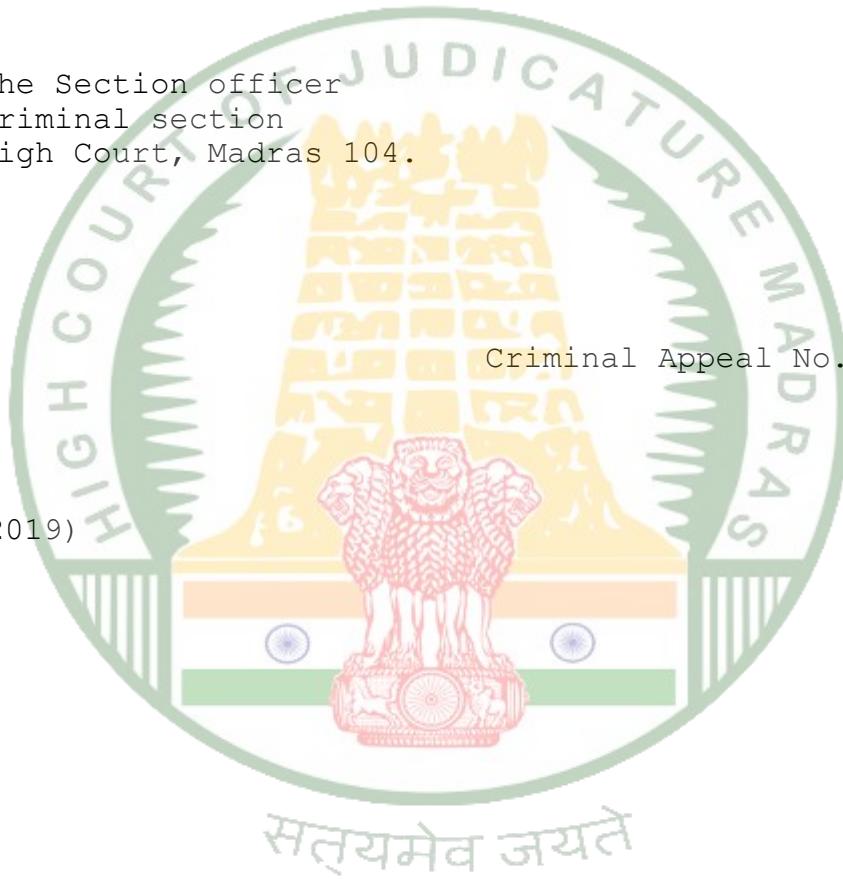
3.The Public Prosecutor,
High Court, Madras -104.

Copy to

The Section officer
Criminal section
High Court, Madras 104.

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BP (CO)
SP (16/09/2019)



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