

Bail Slip.

The Appellant/Accused Irudhayam, S/o. Lakshmanan aged 43 years was directed to be released on bail as per order of this court dated 12.11.2011 and made in M.P. 1/2011 in CrI.A. 715/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No. 715 of 2011

Irudhayam,
S/o. Lakshmanan,
No. 269, Thidir Nagar, 4th Street,
New Wahermenpet,
Chennai-600 081. ... Petitioner/Accused

/versus/

State rep. by
Inspector of Police,
Wahermenpet Police Station (PEW),
Chennai ... Respondent

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C praying against the judgment dated 08.11.2011 made in C.C.No.59/2003 and passed by the Principle Special Judge under E.C and NDPS Act Chennai, convicting the Appellant under Section 8(c), r/w 21(a) of NDPS Act, 1985 to undergo rigorous imprisonment for a period of 3 months.

For Petitioner : Mr. S. Rajkumar

For Respondent : Ms. P. Kritika Kamal
Government Advocate (CrI. Side)

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O R D E R

This appeal preferred against the conviction and sentence imposed by the trial Court in respect of Irudhayam (A2) who was found guilty for offence under Section 8(c) r/w 21(a)(b) of NDPS Act, 1985. The period of sentence imposed on this appellant was 3 months R.I and the period of sentence already undergone was ordered to be set off as per Section 428 of Cr.P.C.

2. The brief facts of the prosecution case is that on 14.07.2001 at about 7.00 am near Pavarkuppam Pallam area. Kutty @ Alexander (A1) and Irudhayam (A2) the present appellant were found in possession of heroin packets packed in small quantity. After affording the option of being searched before the Gazette Officer or Judicial Magistrate, they were searched by the respondent police. 11 small packets of heroin and Rs.80/- being the sale proceeds was recovered from the 1st accused Kutty @ Alexander, 9 small packets of heroin was recovered from A2 who is the present appellant. The total weight of the heroin seized was about 19.500 ml.g. The contraband was send for chemical analysis and found to be heroin. The Chemical analyst has given a report that the contraband contain diacetyl morphine popularly known as Heroin.

3. The prosecution, after completion of the investigation has filed final report against both the accused for offence under Section 8(c) r/w 21(b) of NDPS Act. Both the accused have denied the charges. Hence they were subjected to trial.

4. To prove the case, the prosecution has examined 5 witnesses and marked 11 Exhibits (Ex.P.1 to Ex.P.11) and 2 material objects.

5. PW.1 D.Kanagaraj, Sub Inspector of Police has received the secret information and recorded the same. After informing his immediate superior had proceeded to the spot and apprehended the accused. The option of being searched before the Magistrate or a Gazetted Officer was afforded to the accused person and their reply had been recorded in writing and same being marked as Ex.P.3. The chemical analysis report informing that the examination has revealed the contraband contains diacetyl morphine is marked as Ex.P.9. Though, there was no independent witness for the search and seizure, the trial Court has believed the reason assigned for non-availability of independent witnesses and has convicted the accused persons, to undergo sentence as mentioned above.

6. In the grounds of appeal, the Appellant has submitted that the trial Court has failed to appreciate the failure of the prosecution to secure independent witness. While conducting search and seizure, having gone to the spot based on a specific information and the place of seizure being a public place, the police ought to have in all fairness secured respectable person of the locality to witness the search and seizure. Having failed to do so, grave suspicion is casted upon the prosecution case. Further, submission raised by the learned counsel for the appellant is that the alleged seizure was on 14.07.2001. Though, there is a mandatory duty on I.O to forward the seized property to the Court immediately after seizure, there is an unexplained delay in forwarding the case property to the Court. As per the

record, the seized property was deposited before the trial Court only on 02.08.2001, after the delay of nearly 20 days. This unexplained delay in depositing the case property ought to have weighed the mind of the trial Court.

7. Further pointing out the admission of the mahazar witness that on the cover of the contraband, the Officer has affixed the seal and signature but in the cover produced before the Court there is no such seal or signature. Pointing this contradiction, the learned counsel would submit that the conviction of the appellant by the trial Court is erroneous.

8. Per contra, the learned Government Advocate (Crl.side) appearing for the state would submit that PW.1 in his deposition has categorically deposed that after apprehending the accused when they sought for respectable persons of the locality to be witnessed for the search and seizure, they refused to be witness and only thereafter, they have proceeded with search process, with his own team members after affording opportunity to the accused persons.

9. The learned Government Advocate (Crl.Side) would submit that immediately after the seizure along with the accused, the property was presented before the remand Magistrate along with Form-95 which has been marked as Ex.P.10. Pursuant to the instruction, the property was presented before the Special Court for NDPS Act and there is no delay in producing the seized contraband to the Court. As far as, the contradiction regarding the seal on the cover of the contraband, the witness to the seizure mahazar, in the chief examination has admitted that they have affixed the signature in the mahazar and they have witnessed the seizure process and sealing the packets. The chemical analyst who has received the cover from the Court was examined as PW.2 (Vijaya). She in her chief has deposed that she has received the sealed cover from the Court and compared the seal on the cover with that of the Court seal in the covering letter and thereafter, opened the content and subjected it to chemical analysis.

10. Pointing out these portions of evidence, the learned Government Advocate (Crl.Side) would submit that there is no reason to doubt the contraband seized from the accused is different from contraband submitted for chemical analysis. After considered the rival submissions made by the learned counsel for the appellant as well as the learned Government Advocate (Crl. Side), this Court finds that the manner in which the seizure has been conducted and the arrest is proved through the witnesses as well as the documents. Therefore, there is no reason to interfere the sentence and conviction imposed by the trial Court.

11. The learned Government Advocate (Crl.Side) would submit that the Appellant herein though was granted bail while suspending sentence, he has not availed it and he has undergone the period of sentence and was released on 29.11.2011. In such even, No order is required regarding imprisonment for the remaining period of sentence.

12. In the light of above fact, the Criminal Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

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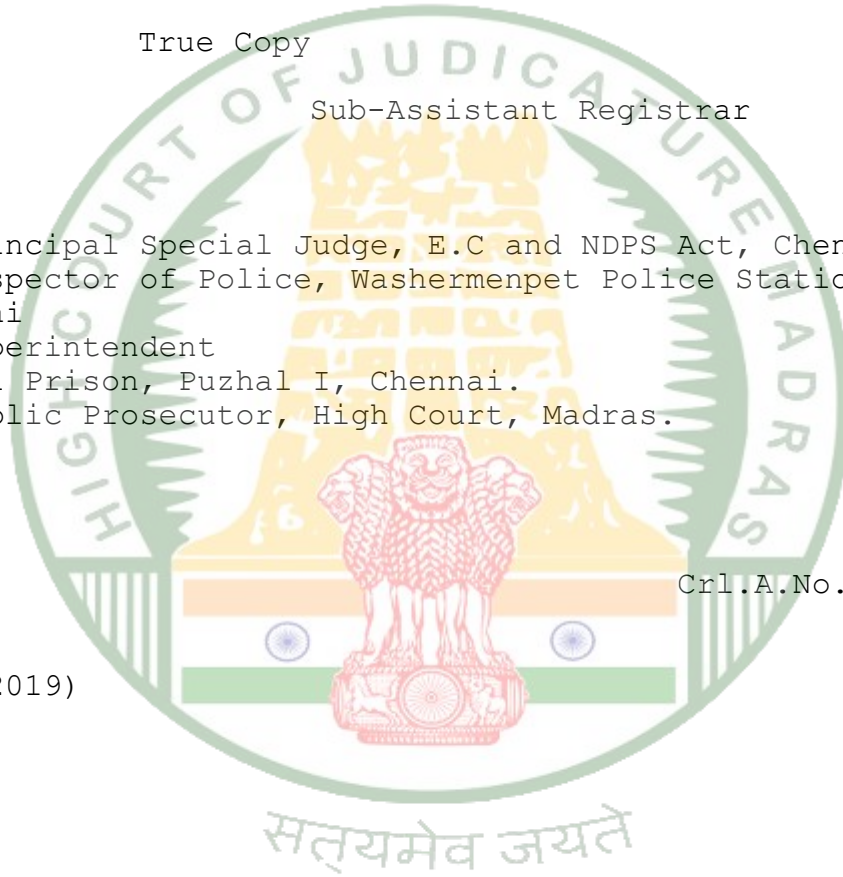
Sub-Assistant Registrar

To

1. The Principal Special Judge, E.C and NDPS Act, Chennai.
2. The Inspector of Police, Washermenpet Police Station (PEW), Chennai
3. The Superintendent
Central Prison, Puzhal I, Chennai.
4. The Public Prosecutor, High Court, Madras.

Crl.A.No.715 of 2011

KAN(CO)
SP(25/03/2019)



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