

Bail Slip.

The Appellant herein/Accused vix Periyasamy S/o.Kalyani was directed to be released on bail as per order of this Court dated 09.12.2011 made in M.P.1/2011 in CrI.A.No.750/2011.

IN THE HIGH COURT JUDICATURE AT MADRAS

Dated : 14.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.750 of 2011

Periyasamy ... Appellant
/versus/

State rep.by
Inspector of Police,
NIB CID,
Chennai ... Respondent

Criminal Appeal has been filed under Section 374 of Cr.P.C., praying to set aside the conviction and sentence passed by the Principal Special Judge for NDPS Cases at Chennai in the judgment dated 21.11.2011 in C.C.No.21 of 2005 and set the petitioner at liberty.

For Appellant :Mr.M.Soundar Vijay Arul Ram

For Respondent :Ms.P.Kritika Kamal, GA

J U D G M E N T

This appeal is directed against the judgment dated 21.11.2011 passed by the learned Special Court for NDPS Act Cases, Chennai in C.C.No.21 of 2005 by the appellant, who was found in possessing of 5 kg of ganja, without valid permit. He was held guilty of the offence under Section 8 (c) r/w 20(b) (ii)(B) of NDPS Act and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default to undergo 3 months Simple Imprisonment.

2. The brief facts of the prosecution case is that on 16.03.2004 at about 1.30 p.m., pursuant to the information received by the Sub Inspector of Police, after recording the information and forwarding the same to the immediate Superior, the team attached to NIB CID proceeded to Rajaji Salai, Clive Battery Bus Stop, Chennai and intercepted the accused. On

identification by the informer, the accused was apprehended. After informing about the Provisions of NDPS Act for exercising his option to be searched before the Judicial Magistrate or a Gazetted Officer, on the consent of the accused, he was searched in the present of the Head Constables, since no independent witness came forward to be as witness for the seizure. During the course of the same, 5kg of ganja in possession of the accused was seized under mahazar. Two samples each containing 50 grams were drawn from the bulk for the purpose of chemical analysis. The bulk and samples were packed separately and labelled with the information about the accused and signature of the mahazar witnesses. A full report regarding seizure and arrest was forwarded to the immediate Superior under Section 57 of NDPS Act. Thereafter, the Sub Inspector of Police, who has effected seizure and arrest, has brought the accused along with contraband to the Station. Registered the First Information Report and remanded the accused to the judicial custody. The property seized from the accused was later produced before the Special Court with a request to forward the samples to the Tamil Nadu Forensic Science Laboratory for chemical analysis, which after due analysis, certified that the samples containing chemicals are known as ''cannabinoid'' commonly known as ''ganja''. After receiving the chemical analysis report, Final Report has been filed by the Investigating Officer. The trial Court has framed charges for the offences under Sections 8 (c) r/w 20(b) (ii) (B) of NDPS Act.

3. To prove the charges, on behalf of the prosecution, the trial Court has examined PW-1 to PW-4 witnesses and marked 13 exhibits as Exs.P1 to P13 besides M.O.1 to M.O.3 as material objects. On the side of the defence, no witness or exhibit marked

4. Trial Court has held the accused guilty of the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo three months Simple Imprisonment. The period of sentence already undergone was set off under Section 428 of Cr.P.C. Aggrieved by the sentence and conviction passed against the appellant, the present Criminal Appeal is preferred before this Court.

5. The main ground raised by the appellant is that the trial Court has failed to appreciate the evidence placed before it and erroneously held the accused guilty and the contradictions in the evidence and violations of the mandatory Provisions of NDPS Act were not properly appreciated by the trial Court. The learned counsel appearing for the appellant would further submit that the search and seizure are alleged to have been effected based on prior information received by PW-2 (Tr.P.S.Sekar, Sub Inspector of Police attached to NIB CID), wherein the so called information, which has been reduced into writing and marked as

Ex.P3, the overwriting on the expected time of arrival and the time at which, the information was reduced into writing, clearly cause a doubt upon the very factum of the information.

6. According to the learned counsel appearing for the appellant, the secret information reduced into writing indicates that the accused would be arriving at Clive Battery Bus stop between 12.00 hours and 13.00 hours on 16.03.2004. The said information was received and recorded by PW-2 [Mr.P.S.Sekar, Sub Inspector] at 12.15 hours. Immediately, the information has been placed before the immediate Superior Inspector of Police, who inturn made an endorsement that "seen and permitted on 16.03.2004 at 12.15 hours". However, as per the evidence of PW-2, he reached the spot only at around 13.30 hours i.e beyond the expected time of arrival.

7. While proceeding to the spot, based on the secret information, the prosecution ought to have taken all care to secure the independent witnesses for his operation, which he failed. Further, the place of seizure being a public place, the explanation given by the prosecution witnesses that the public near the place of seizure, refused to stand as witness, is highly unbelievable.

8. The learned counsel appearing for the appellant would also submit that as far as the seizure of contraband is concerned, the contradictions between the evidence of PW-2 (Seizure Officer) and PW-4 (Investigating Officer) regarding marking of samples gives rise to a doubt whether the samples forwarded for chemical analysis are the same as that of the contrabands alleged to have been seized from the accused. Pointing out the deposition of PW-4, who has stated that he received the sample pockets marked as S1 and S2 from the Sub Inspector of Police, learned counsel appearing for the appellant would submit that the other witnesses, who are privy to seizure and packing of the samples, have not whispered anything about marking of samples pockets as S1 and S2.

9. That being so. Pointing out, when the contraband was alleged to have been seized from the accused on 16.03.2004, the same was presented before the Special Court along with the requisition letter only on 20.03.2004, the learned counsel appearing for the appellant would submit that the prosecution has failed to explain under whose custody the contraband was kept, after seizure and till it was produced before the Special Court. Therefore, submitted that the unexplained delay in forwarding the contraband as well as the silence of the prosecution regarding the custody of the contraband between the seizure and the production of the same before the trial Court and the contradictions regarding marking the sample packets as S1 and S2 enures the benefit of doubt to the accused.

10. Per contra, the learned Government Advocate (crl.side) would submit that the Sub Inspector of Police (PW-2), after receiving the information [Ex.P2], had taken all efforts to secure the independent witness for seizure and arrest. However, no independent witness was ready to be part of the seizure proceedings. One Munusamy, push card vendor and Babu, Tea vendor were requested to be the witnesses, but they refused to stand as witnesses. PW-2 and his team have proceeded with the search and seizure process and the same has been recorded in Ex.P5 mahazar which is the contemporaneous document. Therefore, there is no reason to suspect the case of the prosecution regarding the seizure and arrest.

11. As far as the delay in forwarding the contraband is concerned, the learned Government Advocate(crl.side) would point out that immediately after the arrest of the accused, the property along with the accused has been forwarded to the nearest Judicial Magistrate. The initial made in the request letter accompanied with Form-95 would go to show that the property was produced before the Magistrate on 16.03.2004 itself. On his instruction, the same was produced before the Special Court on 17.03.2004 and the requisition letter for forwarding the samples for chemical analysis was given on 17.03.2004 along with the samples. Between 16.03.2004 and 23.03.2004, the property was under proper custody of the Investigating Officer and the same was elucidated in the deposition of Mr.Ashok kumar [PW-4]. Pointing out the date and seal found in requisition letter [Ex.P12] and the testimony of PW-4[Mr.Ashok Kumar] regarding the custody of the contraband, the learned Government Advocate would submit that there is no violation of Section 52 of NDPS Act in respect of the custody of the property seized and the identity of the samples as well as the bulk seized from the accused and hence, the same cannot be suspected or doubted.

12. Heard rival submissions and perused the records.

13. It is the case of seizure of 5 kg of ganja in a public place from the accused based on the secret information received by the Law Enforcing Agency. Ex.P3 is a specific information reduced into writing by PW-2 which indicates that the name of the suspect, place of his arrival and expected time of his arrival. Pursuant to the receipt of this information, PW-2 has proceeded to the spot, after forwarding the information received by him. His immediate Superior PW-4 Inspector of Police has permitted him to proceed and take suitable action. In the said course, PW-2 has proceeded to the spot, where the informant identified the accused, PW-2 has secured the accused, who was carrying the green colour rexine bag and the bag was found to contain cannabinoid known as ''ganja''. After recovering the

contraband, two samples were taken. PW-3 witness to the mahazar and one head constable No.8832 have affixed their signatures on the bulk as well as the samples, which were labelled and affixed with NIB seal. PW-1[Chemcial Analyst] after having received the sample along with the requisition letter of the Court, has compared the seal of the Court as well as the seal of the police and being satisfied that the seals were intact, he has taken out the content of the pocket and subjected it for chemical analysis. The chemical analysis report was marked as Ex.P1, which indicates that the substance seized from the accused, contains cannabis known as ganja.

14. Though the learned counsel for the appellant would point out few contradictions in the evidence of PW-2 and PW-4, those contradictions are very minor in nature and not much significant to reject the prosecution case, thus, the evidence adduced by the prosecution proves beyond doubt the recovery of ganja from the accused. Further, no plausible explanation is offered by the accused for the possession of ganja. Hence, the act of the accused attracts punishment under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act. Hence, the conviction of the appellant by the trial Court is bound to be upheld.

15. The learned counsel for the appellant would submit that the accused is now aged about 70 years and is under treatment. Further, he has no bad antecedents. Therefore, prayed liberal view may be taken regarding the period of imprisonment.

16. Considering the age and ordeal faced by the appellant for the past 15 years, this Court is of the opinion that the sentence of imprisonment imposed by the trial Court is to be modified. Accordingly, the period of imprisonment is reduced into 9 months Rigorous Imprisonment instead of 2 years Rigorous Imprisonment. The fine amount of Rs.5,000/- stands confirmed. The period of imprisonment already undergone by the accused is to be set off under Section 428 of Cr.P.C. The Bail bond, if any, executed by the accused shall be cancelled. The trial Court is directed to secure the accused and commit him to the prison for the remaining period of sentence.

17. Accordingly, this Criminal Appeal is partly allowed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

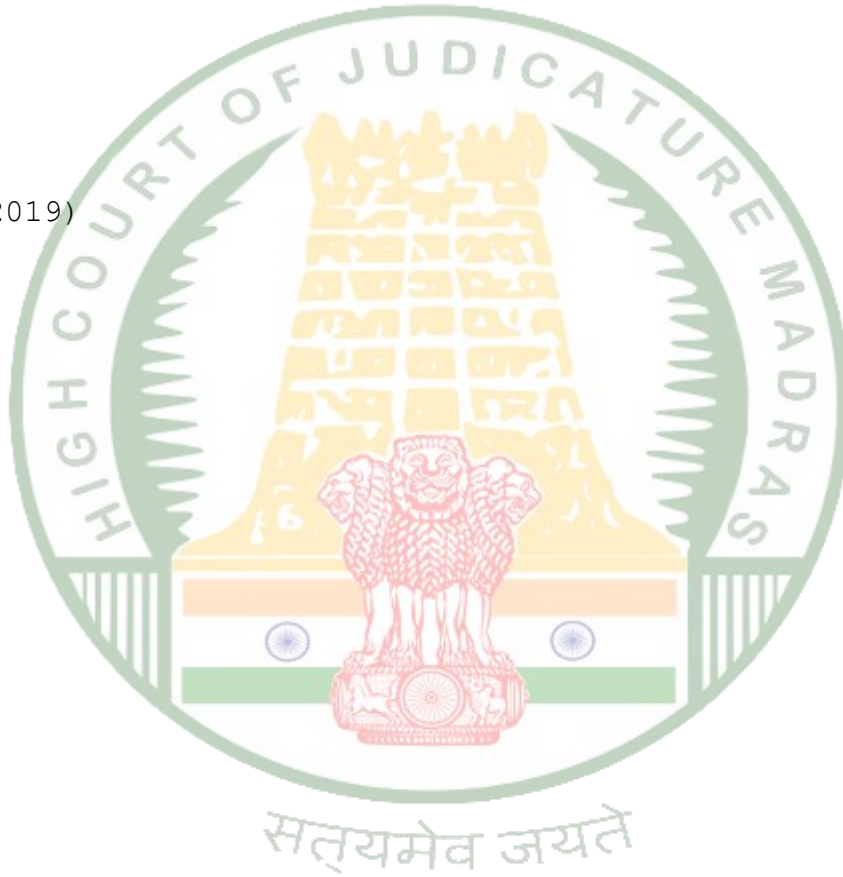
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To

- 1.The Principal Special Judge for NDPS Cases, Chennai.
- 2.Inspector of Police, NIB CID, Chennai.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent
Central Prison, Puzhal, Chennai.

CrI.A.No. 750 of 2011

PM (CO)
SP (27/03/2019)



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