

BAIL SLIP

The Appellant/Sole Accused namely Palaniammal, W/o.Malaisamy was directed to be released on bail as per order of this Court dated 24.05.2012 made in CrI.M.P.No.1 of 2012 in CrI.A.No.293 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.A.No.293 of 2012

Palaniammal

... Appellant/Accused

Vs.

State Rep. by
Inspector of Police,
NIB CID Chennai
(Cr. No.71 of 2010)

...Respondent/Complainant

Prayer: This Criminal Appeal filed under Section 374 (2) Cr.P.C. against the Judgment passed by the learned II Additional Special Judge for NDPS Act cases, Chennai in C.C.No.69 of 2010, dated 17.04.2012

For Appellant : Mr.K.Murugesan
For Mr.V.Ganesan

For Respondent : Mrs.Kritika kamal.P
Government Advocate (CrI. side)

J U D G M E N T

This Criminal appeal has been preferred by the sole accused Palaniammal who found guilty by the Special Court for NDPS Act cases, Chennai for offence under Section 8 (c) r/w. 20(b)(ii)(B) of NDPS Act for possessing 6 Kgs of Ganja without valid permit or licence. She was sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo further period of one month Rigorous Imprisonment.

2. The case of the prosecution is that Mr.Subramani, Head Constable attached to NIBCID, Chennai received a secret information through his informant on 07.09.2010 at about 11.00 hours that one Palaniammal aged about 35 years is likely to come near Chennai Central Railway Station between 12.00 and 1.00 hours with Ganja.

3. On receiving the said information, the said Subramani, Head Constable reduced the information into writing and submitted the same to his immediate superior Balamurugan, Inspector of police. After obtaining his permission, Subramani along with his team members proceeded to the spot, mentioned by the informant. At about 12.30 hours, the informant identified Palaniammal; She was carrying Rose colour bag. She was inspected and interrogated after explaining her right of exercising the option to search before the Magistrate or Gazetted Officer and ascertain that she is not inclined to exercise the said option. Subramani, Head Constable has recorded the same in writing and obtained the thumb impression of Palaniammal and proceeded to search the bag that she was carrying. Since the public person declined to stand as witness, Subramani and the Head Constable Mr.Velazhagan and a Woman Constable Mrs.Kavitha conducted the search of the bag. They found Ganja leaves and buds. The weight of the contraband found at 6 Kgs. From the bulk two samples, each 50 grams was drawn, tied and sealed with NIB Seal. The balance bulk quantity was separately packed and sealed. The contraband was seized under a Mahazar. The accused was arrested for possessing 6 Kgs of Ganja and brought to the police station. Under section 57 of the NDPS Act, a final report of seizure was submitted by Subramani to the Inspector of police. First information Report was recorded and the accused was remanded to prison. In the course of investigation, one of the sample packet was sent for chemical analysis. The Forensic Science Laboratory subjected the content of the sample packet for chemical analysis and found that it contains cannabinoids which is a chemical name for Ganja.

4. The prosecution, to prove the charge against the accused, has examined 5 witnesses. Through Mrs.T.M.T.V.K.Selvarani, Chemical Examiner/Assistant Director of Forensic Science Department, Chennai is PW1, the chemical analysis report furnished by her is marked as Ex.P2. Subramani, Head Constable who received the information and proceeded with the team was examined as PW2. The information received by him was marked as Ex.P3, which contains the permission and initial of PW5 Balamurugan, Inspector of Police. The same is corroborated and identified by PW4 who received the final report of seizure and arrest from PW2. The said report is marked as Ex.P7. Since, the evidence of PW2 regarding information search

and seizure of contraband from the possession of the accused Palaniammal corroborated by the evidence of PW3 and PW4, the trial Court has held her guilty.

5. Aggrieved by the said conviction and sentence, the appellant has preferred the present appeal.

6. According to the appellant, the alleged spot is a very busy place near Central Railway Station, Wall tax Road Junction, Chennai. The prosecution's explanation for not procuring independent witness for the search and seizure is highly unbelievable. Even if some of the persons were present and refused to stand as witness, the NIB team ought to have secure some other respectable person in that locality witness the search process. Ex.P2 the alleged information indicates that the informant has told PW2 that the accused will be coming to the spot on 07.09.2010 between 12.00 to 15.00 hours. Whereas when the accused was identified by the informant near the Central Railway Station and the alleged option given to the accused which was marked as Ex.P4 indicates that the information received by Subramani was that the accused will come to the spot between 11.00 to 12.30 hours. The inconsistency between the information reduced in writing Ex.P3 and the options recorded in Ex.P4 would disclose that the entire records were not prepared in the manner in which the witnesses have spoken. In the absence of any independent witness, mere based on the evidence of PW2 to PW5 who were all attached to the NIB wing and in the light of contradiction between Ex.P5 and Ex.P6, the trial Court ought to have acquitted the accused for want of proof.

7. Referring the Mahazar Ex.P5, the arrest memo Ex.P6 and the First Information Report Ex.P8, the learned counsel appearing for the appellant would submit that these documents does not specifically mentions the place, where the accused was apprehended and arrested. The vague reference near Central Railway Station is insufficient to hold the accused guilty. Since the prosecution has failed to say specifically from where the contraband was seized from the accused and the delay in forwarding the contraband to the Special Court leads to suspicion.

8. It is contended by the learned counsel for the appellant that unexplained delay in forwarding the contraband has not considered by the Court below. The learned counsel would finally submit that a conviction of the accused for the offence under Section 8 (c) r/w. 20(b)(ii)(B) of NDPS Act is erroneous, even otherwise one year Rigorous Imprisonment is very excessive.

9. The learned Public Prosecutor for the State would submit that the accused was intercepted near Central Railway Station of

Wall tax Road Junction, Chennai, based on the specific information received by PW2 from his informant. Immediately after receiving the information, it was reduced into writing and placed before PW5, the Inspector of Police. Ex.P3 is the Information received by PW2 and sent by PW5. The option given to the accused was reduced into writing in the spot where there is some discrepancy in the expected time of the accused arrival. This is to be considered as an error by oversight, since the fact remains after the interception of the accused she was arrested for possession of 6 kgs of Ganja. Mahazar was prepared on the spot and she was brought to the Police Station immediately.

10. Based on the report of PW2, First Information Report was recorded at 15.00 hours on the same day. The accused was arrested and produced before the Magistrate at 22.00 hours along with records and the Contraband. Form-95, Ex P9 was initially presented before the remand Magistrate. As per the instruction, after the records were transferred to the Special Court for NDPS cases, the entire contraband was presented before the Special Court along with the requisition letter to send one of the sample packet for chemical analysis. Ex P1 is the forwarding letter of the Special Court to the Laboratory accompanying the requisition letter. PW-1 in the Laboratory conducted analysis and given her report Ex.P2. Therefore, there is no delay in forwarding the contraband to the Court as well as there is no infirmity or suspicious circumstances in the manner in which the accused was apprehending and arrested for illicit possession of Ganja.

11. Heard the learned counsel appearing on either side and records perused.

12. PW2 is the Head Constable attached to NIB Police. He received the information about the illicit trafficking of Ganja by the accused. The accused is resident of Theni District and she has been intercepted near Central Railway Station carrying rose colour bag containing 6 kgs of Ganja. She could not explain the possession of Ganja and the reason for her presence in the said place. The 57 report which is marked as Ex P7 has the full details of how the accused was arrested for the possession of Ganja.

13. On reading the information Ex P3, the notice of option Ex P4 and the final report under Section 57 which is marked as Ex P7, this Court finds no infirmity in the case of the prosecution, though in the option notice there is some discrepancy and error regarding the time to expected arrival.

14. As far as the alleged delay in forwarding the contraband, the records indicate that the samples were drawn on the spot and it has been sent to the Court at the earliest along with the accused during the first remand and thereafter it has been produced before the Special Court after 31 days. Further PW1 the chemical examiner who received the sample packets has deposed that he received the packet with NIB seal along with the requisition letter from the Court. If there is any tampering, she would have noticed it and recorded the same. Since PW1 has not mentioned any tampering of seal, there is no reason to suspect the manipulation as held by the learned counsel for the appellant.

15. Regarding the absence of independent witness, undoubtedly PW2 could have sought for any other independent witness, of the locality, even if some of them had refused to stand as witness as noted in the mahazar itself, but that failure cannot throw out the entire prosecution case. In the case of this nature, it is very difficult for the prosecution to secure independent witnesses. Respectable persons may express hesitation and reluctance to stand as witness out of fear. When the available witness inspires the confidence of the Court, even though they are official witnesses, their evidence could be accepted if it is corroborated with material facts.

16. In this case as pointed out, the accused is a resident of Theni District, she could not explain her presence in Chennai near Central Railway Station neither she is able to explain the possession of 6 kgs of Ganja. The contraband has been kept in the bag carried by the accused. The seizure was made in the public place. Therefore, the required mandatory provisions under the Act being fully complied and when the evidence of the prosecution sufficiently inspires the confidence of the Court to prove the guilty of the accused. There is no material for the appellate Court to interfere with. Therefore, the appeal is liable to be dismissed.

17. The learned counsel for the appellant would contend that the appellant being a lady and never been involved subsequently in any case of this nature, leniency may be shown in sentence.

18. Considering the said submission and the quantum of contraband illegally possessed by the appellant, this Court is of the view that the period of imprisonment shall be modified from one year Rigorous Imprisonment to eight months Rigorous imprisonment. Accordingly, the appeal is partly allowed. The

period of sentence already undergone by the accused/appellant shall be set of under Section 428 I.P.C.

vum

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Special Judge,
Special Court for EC and NDPS cases,
Chennai-104.
2. The Section Officer,
Criminal Section,
High Court, Madras.
3. The Inspector of Police,
NIB CID, Chennai - 34.
4. The Spl. Public Prosecutor
for NIB CID cases,
High Court, Madras.
5. The Superintendent,
Central Prison, Puzhal,
Chennai.

CrI.A.No.293 of 2012

Kak(08/05/2019)

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