

Bail Slip

The Appellant/Accused namely Mr. Jagan, S/o. Munusamy was directed to be released on bail as per the order of this Court dated 19.07.2012 in M.P. No. 1/2012 in CrI.A. 296/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.296 of 2012

Jagan

Appellant/Accused

Vs

State Rep by,
Inspector of Police
NIBCID, Chennai.

Respondent

Prayer: Criminal Appeal filed under Section 374(ii) of the code of Criminal Procedure, to set aside the Judgment passed by the learned I Additional Special Judge, for NDPS Cases at Chennai, in C.C.No.278 of 2004 dated 17.04.2012.

For Appellant : Mr.T.Muruganandham
(Legal Aid Counsel)

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Criminal Side)

J U D G M E N T

This Criminal appeal is directed against the conviction and sentence imposed upon the appellant/accused for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 as amended by Act 9/2001.

2 The respondent police registered a case against the appellant for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 as amended by Act 9/2001, before the learned I Additional Special Judge, for NDPS Cases, Chennai.

3 learned I Additional Special Judge, for NDPS Cases at Chennai, considering the evidences placed before the Court such as depositions of P.W.1 Sekar, the Sub- Inspector of Police and P.W.4. V.Ashok Kumar, the Inspector of Police, the trial Court concluded that the prosecution has proved the illicit possession of Ganja by the accused and recovery of the same from his possession. The trial Court has held that the accused found guilty of the charges and convicted him to undergo 4 years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo further period of 6 months rigorous imprisonment.

4 In order to prove the case of the prosecution has examined 4 witnesses and 12 exhibits were marked. Besides 3 material objects. On the side of the appellant there is no oral and documentary evidence was produced.

5 Aggrieved by the said judgment of conviction, the appellant has preferred the present appeal before this Court.

6 The learned counsel for the appellant would submit that the appellant is no way connected with the offence and he had been falsely implicated in this case. The appellant was arrested on 16.07.2004 at about 19.00 hours, at Koyambedu, Poonamallee High way, Chennai for the alleged offence said to have been committed by appellant under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act, the learned trial Judge, failed to consider the fact that mandatory procedures contemplated under Section 42 to 57 of the NDPS Act was not complied with by the Investigating Officer. The definition of ganja as defined under Section 7(3)(b) of NDPS Act has not been properly appreciated by the trial Judge. The learned trial judge failed to consider the contradiction in the evidence of prosecution witness and did not appreciate the same as known to law. The trial Court failed to appreciate the evidence of Investigating Officer for non-compliance of the mandatory provisions under NDPS Act by P.W.1 regarding arrest seizure and recovery. There was no independent witness was examined to prove the case of the prosecution and the appellant was falsely implicated in this case, which warrants interference of this Court.

7 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that on 16.07.2004 the respondent police received secret information that the accused is in possession of Ganja near Poonamallee high road, 100 feet road, Koyambedu Chennai. The said information was received at about 15.00 hours, the respondent police had proceeded to the spot with his team and arrested the accused who was carrying a bag in his hand contain 10.00kgs of Ganja. The prosecution has proved its case beyond reasonable doubt and there is no

perversity in appreciation of the evidence, which does not warrants any interference by this Court.

8 The case of the prosecution is that on 16.07.2004, at about 15.00 hours, the Sub-Inspector of Police, attached to the respondent police received the information and the same as reduce to writing, P.W.1 Sekar, the Sub- Inspector of Police, forwarded the information to his immediate superior P.W.4. V.Ashok Kumar, the Inspector of Police. After obtaining his permission, he prceeded to the spot with his team consisting of Mangalanathan. When they reached the spot, the informant identified the accused who was carrying the bag in his hand. The bag carried by the accused found to have contained 10.00 kgs of Ganja. The detailed report about seizure and arrest has been forwarded to the Inspector of Police, being the immediate superior, as per Section 57 of NDPS Act. The accused was remanded to judicial custody. The property was returned to police who present before the Special Court. The sample was sent for chemical analysis, which was subjected to analysis at the Tamilnadu State Forensic Science Laboratory. P.W.2 Shanmugam, Scientific Officer has given a report that the seized contraband contains canabinoid which is known as Ganja. Based on the materials collected during the course of investigation, the prosecution laid Final Report against the accused for the offence punishable under Section 8(c) r/w 20(b) (ii) (B) NDPS Act 1985.

9 Moreover, from Ex.P.4/Arrest Memo and the evidence of P.W.1, P.W.3 and P.W.4, the recovery of 10.00kgs of ganja from the possession of the accused is corroborated and established. Moreover, the evidences examined in this case are all official witnesses and no other independent witnesses have been examined. It is true that in these type of cases, many times individuals will not come forward to stand as witnesses. The raiding team has sought the assistance of the individuals who were present in the spot, but they declined to stand as independent witnesses. This fact finds place in the First Information Report and report under Section 57 of the Act forwarded to the immediate superior. Therefore, the accused cannot find fault on the prosecution case for non examination of any independent witnesses.

10 This Court being an appellate Court, while deciding an appeal, it can always re-appreciate entire evidence and give independent finding regarding the guilt of the accused. On reading of the entire materials, it is seen that the appellant has committed the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 and the evidence of P.W.1, P.W.3 and P.W.4 have also proved the same. All the other witnesses have spoken about seizure, arrest and recovery. Therefore, this Court has come to

the conclusion that the appellant was in conscious possession of the contraband and does not find any valid ground and reason to take a different view in the present case on hand. Therefore, under these circumstances, this Court finds that there is no reason to interfere with the judgment of the Special Court and there is no merit in the appeal and hence, the appeal is liable to be dismissed.

11 In the result, the Criminal Appeal is dismissed. The counsel for the appellant/accused on record, who was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

sbn
To

1. The I Additional Special Judge,
I Additional Special Court for NDPS Cases, Chennai
2. The Inspector of Police
NIBCID, Chennai.
3. The Public Prosecutor
High Court
Madras
4. The Superintendent
Central Prison, Puzhal, Chennai
5. The Member Secretary
Tamil Nadu State Legal Services Authority
Chennai
6. The Section officer
Criminal Section
High Court, Madras 104.
+1 CC to Mr.T.Muguganandham, Advocate sr 52821.

Criminal Appeal No.296 of 2012

BR(CO)
SP(21/02/2020)