

Bail Slip

The Appellant/Accused Viz., Janaki, W/O Santhakumar, (in C.C.No.85/2007 dated 19/6/2012) on the file of the Special Judge, II Additional Special Judge Court under NDPS Act Chennai) was directed to be released on bail as per the order of this Court dated 2/7/2012 in M.P.1 of 2012 in CrI.A.383 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.383 of 2012

Janaki

... Appellant

Vs

The State
Rep by
Inspector of Police
NIBCID, Chennai
Cr.No.32/2006)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(ii) of the code of Criminal Procedure, praying to set aside the conviction and sentence imposed upon the appellant/accused in CC No.85 of 2007 on the file of Special Judge, II Additional Special Court under NDPS Act, Chennai dated 19.06.2012.

For Appellant : Mr. M. Velmurugan

For Respondent : Mr.T. Shanmuga Rajeswaran,
Government Advocate

J U D G M E N T

This Criminal appeal is directed against the conviction and sentence imposed upon the appellant/accused by the trial Court 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 case of the prosecution is that on 28.04.2008, the Head Constable, working in NIBCID received a secret information

that the accused is selling Ganja near Baindiamman Kovil backside, No.406, Odaikuppam, Besant Nagar, Chennai. The said information was received at about 10.00 am. After reducing the said information in writing, PW-3 Annakamu, the Head constable has forwarded the information to his immediate superior PW-5 Murugaiyan, the Sub Inspector of Police. After obtaining his permission, he has proceeded to the spot with his team consisting of Muthaiah, Head Constable, Kesavan, Grade I Police constable and Sweeper of NIBCID office one Rani. When they reached the spot, the informant identified them the accused who was carrying a bag in her hand. The accused was informed about the right to be searched before Magistrate or any Gazetted Officer. The accused declined the offer and agreed to be searched by the Sub-Inspector of Police. Being a lady, the accused was subjected to personal search by Rani. The bag carried by the accused found to contain 2.300 kgs of Ganja. Two samples each 50 gms were separated, packed and sealed, for the purpose of chemical analysis. The detailed report about Seizure and arrest has been forwarded to the Sub-Inspector of police, the immediate superior, as per Section 57 of NDPS Act. The accused was remanded to judicial custody. The property was returned to police to be present before the Special court. The sample was sent for chemical analysis, which was subjected to analysis at the Tamil Nadu State Forensic Science Laboratory. PW-1, Banumathi, Scientific Officer has given a report that the seized contraband contains cannabinoid which is known as Ganja. Based on the materials collected during the course of investigation, the prosecution has laid Final Report against the accused for the offence punishable under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985.

3. To prove the case, the prosecution has examined 6 witnesses. 11 exhibits were marked. Besides 3 material objects. To prove the innocence, defence has examined 2 witnesses. No exhibits were marked on the side of the accused.

4. The trial Court considering the evidences placed before the court such as depositions PW-3 Annakamu, the Head constable and PW-5 Murugaiyan, the Sub Inspector of Police, who has gone to the spot and conducted the seizure of the contraband and arrest of the accused and investigated the case, the trial Court concluded that the prosecution has proved the illicit possession of Ganja by the accused and recovery of the same from her possession. The trial Court has held that the accused guilty of the charge and convicted her to undergo 2 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo further period of 8 months rigorous imprisonment.

5. Aggrieved by the said Judgment, the present appeal is preferred.

6. The learned Counsel appearing for the appellant would contend that the very fact of receiving secret information and proceeding to the spot itself is false and that can be easily seen from the evidence of Rani, who has deposed that the head constable Annakamu informed her at around 7.00 am to 8.00 am to stay in the office, since her service is required for some action. However, the alleged information was received by Annakamu only at 10.00 am. Therefore, anticipating information from the informant at 10.00am, PW-3 has requested PW-6 at 7.00am itself to stay in the Station, which apposed to common sense. Further pointing out the discrepancies between the evidence of PW-3, PW-5 and PW-6 regarding the vehicle in which they proceeded to the spot, number of persons accompanied in the team and the manner in which the contraband alleged to have been recovered from the accused would cumulatively cause doubt on the prosecution case.

7. The learned Counsel appearing for the appellant would further submit that, even according to the prosecution, the contraband was carried by the accused and the same was recovered from her possession by the raiding team. Under such circumstances, the recovery of contraband carried by the accused should be considered as recovering from the person. So, the conditions under Section 50 of NDPS Act ought to have been complied with. Even otherwise, the contradiction in the evidences of prosecution witnesses namely PW-1, Banumathi, PW-2, Muthaiah regarding the condition of contraband seized would go to show that they have not forwarded the material what they have actually seized from the accused.

8. The learned Counsel would submit that the alleged recovery and seizure of contraband was on 28.04.2006. The sample contraband was received by PW-1 on 18.05.2006, which was subjected to chemical analysis and PW-1 has forwarded the report dated 14.08.2006 to the Court and the same has been received on 24.11.2006. While PW-2 in his deposition has stated that the contents of bag carried by the accused was found to be dry leaves of Ganja. PW-1, the Scientific Officer, who opened the sample packet after 4 months of the recovery has deposed that she found green leaves of Ganja in the sample packet. Therefore, it is doubtful whether the material seized from the accused alone was forwarded to the Lab.

9. Per contra, the learned Government Advocate would submit that the raiding team went to the spot based on the specific information received by PW-3. After recording the information as per Section 42 of NDPS Act, it was intimated to the immediate superior and the team has proceeded to the spot. The informant identified the accused, who was coming by walk

through Baindiamman Kovil backside, Odai Kuppam, Besant Nagar, Chennai. The spot of recovery is a public place. The kind of search in this case has no relevance to Under section 50 of NDPS Act. However, the accused was intimated about her right under Section 50 of NDPS Act, to ought to be searched before Gazetted officer or nearest Magistrate. Only after obtaining her option, she was subjected to body search. Regarding the nature of contraband, the learned Public Prosecutor would submit that the Scientific Officer in her chief examination has stated that the samples sent to her were both dry and green leaves. Therefore, there is no ground to suspect regarding the fact that what was seized from the accused alone been forwarded to the Laboratory.

10. Further, the learned Public Prosecutor would submit that the material seized from the accused was forwarded to the Magistrate and the sample was forwarded to the Laboratory through the Special Court, based on the request letter given by the Investigation Officer. PW-1 has duly received the sample bag and analysed the samples. The Chemical analysis disclosed the substance contains cannabinoids known as Ganja. These facts are spoken by PW-1 in her chief examination and no iota of suspicion in her deposition would be entertained.

11. Moreover, from Ex.P.6 Mahazar, and Ex.P.7 Arrest Memo and on perusing the evidence of PW-2, PW-3, PW-5 and PW-6, the recovery of 2.300kgs 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 be independent witnesses. The raiding team has sought the assistance of the individuals who were present in the spot, but they declined to stand as witnesses. This fact finds place in the First Information Report and Section 57 Report forwarded to the immediate superior. Therefore, the accused can not fault the prosecution case for non-examination of any independent witnesses.

12. The defence through DW-1 and DW-2 has projected that the case has been falsely foisted against the accused and the police visited the house of the accused 2 weeks prior to the incident and enquired the accused husband. These witnesses had deposed about the incident took place two week ago and taking the accused from the accused house on the date of occurrence. Their evidence does not dent the case of the prosecution. Further, DW-1 Sundari a resident of 7 houses away from the accused house. DW-2 Chitra a house wife and her house was located 5 to 6 houses away from the accused house. Since they are neighbors of the accused, chance and possibility of their presence at the time of occurrence, if really, the police has picked up the

appellant from her residence. But the case of the prosecution is that the accused was intercepted near Elliots Road - Velankananti Church junction at Besant Nagar, Chennai. In the said circumstances, this Court finds that the presumption under Section 35 of the Act regarding the culpable mental state of the accused and Section 54 of the Act regarding the presumption of possession of Ganja illegally has to drawn.

13. The learned counsel appearing for the appellant would submit that the appellant being a lady with 3 children had been suffered enough due to this case and she has no other adverse case except this case. Therefore, 2 years rigorous imprisonment for possession of 2.300 kgs of Ganja will ruin her future.

14. On cumulative assessment of the facts and submissions of the learned Counsel for the appellant, this Court is of the considered opinion that the conviction and sentence imposed on the accused by the trial Court is to be modified.

15. Therefore, the lower Court Judgment of conviction and sentence is modified. This Criminal Appeal is partly allowed. The appellant/accused is ordered to undergo 3 months rigorous imprisonment and to pay a fine of Rs.10,000/-. The learned Counsel for the appellant would submit that the fine amount has already been paid by the accused, while the appellant preferred this appeal. Hence, there is no necessity to mention about any default sentence.

16. The trial Court is directed to take steps to secure the accused and make arrangements for sending her to the prison for serving the remaining period of sentence. Period of sentence already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

Sd/-

सत्यमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrn
To

1. The Special Judge,
II Additional Special Court under NDPS Act,
Chennai-104.

2. The Public Prosecutor,
High Court, Madras.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Inspector of Police,
NBCID, Chennai.
5. The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.Velmurugan, Advocate Sr.14914

Criminal Appeal No.383 of 2012

gp[col]
srg 18/03/2019



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