

Bail Slip.

The Appellant/Sole Accused namely Arokiyadoss, S/o.Susai was directed to be released on bail as per order of this court dated 25.09.2012 made in Crl.M.P.1/2012 in Crl.A.No.603/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.603 of 2012

Arokiyadoss .. Appellant/Accused

/versus/

State rep.by

Inspector of Police,

NIBCID, Chennai-2.

.. Respondent /Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence passed by the Special Judge, I Additional Special Court Under NDPS Act, Chennai and made in C.C.No.308 of 2004 by judgment dated 03.09.2012.

For Appellant :Mr.T.S.Srinivasan

For Respondent :Mrs.Kritika Kamal, P  
G.A.(crl.side)

J U D G M E N T

This appeal is directed against the judgment of Special Court for NDPS Act Cases rendered in C.C.No.308 of 2004 dated 03.09.2012.

2. The brief facts of the case is that the appellant was arrested by PW-2 [M.Royappan Yesunesan] Sub Inspector of Police attached to NIB CID Chennai on 20.05.2004 at about 12.15 hours near S.M.Chetty Street, 'O' Gate Harbour Entrance, Kasimedu, Chennai-13 for possessing of 5 kgs of ganja without any valid permit.

3. The case of the prosecution is that on specific information received by PW-2[M.Royappan Yesunesan] Sub Inspector of Police on 20.05.2004 at about 10.45 a.m, he and his team went to the spot at about 12.00 noon. The informant identified the accused, who was found carrying a polythene bag in his hand. After informing the right under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act") to

the accused, the bag was searched and found it containing 5 kgs of ganja.

4. Two samples each containing 50 grams drawn from the bulk were sealed and labelled. After recovery of the contraband from the accused, the accused was arrested and brought to the Station. A case was registered in Crime No.56 of 2004 for the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act.

5. One of the sample packet drawn from the bulk was forwarded to the chemical analysis through the Court. The Chemical Examiner has found that it contains cannabinoid. Accordingly, Chemical Analytical report [Ex.P2] was sent to the Court. The trial Court, after considering the evidence of PW-1 [Arulanandam] Chemical Examiner, PW-2[M.Royappan Yesunesan] Sub Inspector of Police, who has received the information, PW-3 [Raja] Head Constable, who went to the spot along with his team and the evidence of the Investigating Officer PW-4[Ashok Kumar], has held the accused guilty of possessing 5 kgs of ganja, convicted the accused and sentenced him to undergo two years Rigorous Imprisonment and to pay the fine of Rs.25,000/- in default to undergo one month Rigorous Imprisonment.

6. The learned counsel appearing for the appellant would submit that in the absence of public witnesses, the members of the raiding team has to come out with fair and true facts without any contradiction, whereas, in this case, PW-2 [M.Royappan Yesunesan] and PW-3[Raja] had not spoken consistently about the case of the prosecution. While PW-2 [M.Royappan Yesunesan]Sub Inspector of Police, who alleged to have received the information and recorded it under Section 42 of NDPS Act marked as Ex.P3 has deposed that he received the information[Ex.P3] on 20.05.2004 at about 10.45 a.m, indicates that the information was received only at about 10.45 a.m and that has been seen by PW-4[Ashok Kumar] Inspector of Police at 11.00 hours, whereas, PW-3[Raja] Head Constable, who accompanied with PW-2, according to the prosecution has stated that the team left the station at 10.15 a.m., which is contrary to the documentary evidence Ex.P3 and ocular evidence of PW-2.

7. Further, the learned counsel appearing for the appellant would submit that the contraband alleged to have been seized from the accused person under mahazar [Ex.P5] at 13.00 hours on 20.05.2004 carries the crime number of the case, whereas, even according to the prosecution, the case was registered, after completion of seizure, arrest and the property along with the accused was brought to the station at 14.00 hours. Further, the learned counsel would submit that the alleged incident of recovery of contraband has taken place near Kasimedu at about 13.00 hours. The case was registered at the police station at about 14.00 hours, whereas, the arrest intimation to the relevant

of the accused has been seen from Anna Road, Telegraph Office at about 14.03 hours on 20.05.2004. Ex.P8-copy of the telegram and the receipt issued by the Telegraph Office, Anna Road would indicate that in the arrest intimation, the crime number is mentioned. Pointing out the contradictions of the prosecution witnesses PW-2 and PW-3 and the variations in the time regarding arrest and presence of the crime number in the contraband, even before registering the First Information Report, the learned counsel appearing for the appellant would submit that the case of the prosecution is doubtful and the benefit of doubt ought to have been given to the accused, whereas the trial Court has erroneously drawn presumption against the accused and held him guilty.

8. Per contra, the learned Government Advocate (crl.side) would submit that the error in timing is not a grave and serious to doubt the case of the prosecution. Few minutes or few hours difference will not render the entire case of the prosecution false. The learned Government Advocate would submit that the raid has been conducted based on the information received by PW-2. It was duly recorded and forwarded to the Superior Officer[PW-4] by 11.00 a.m. PW-4 [Ashok kumar] Inspector of Police had spoken about the receipt of the information and on his permission, PW-2 had proceeded to the spot. While so, the time mentioned by PW-3 regarding the time of reaching the spot wrongly does not infringe the case of the prosecution, since PW-3 has corroborated the evidence of PW-2 in respect of the time at which the seizure was effected and the time at which, the accused was arrested. The presence of crime number on the property label and the intimation which was prepared contemporaneously is only for the sake of identification of the property. Since the accused has signed the seizure mahazar [Ex.P5] and admits the recovery of the contraband from his possession, he is bound to discharge the reverse burden proving his possession as legal possession. Having failed to explain the possession, the accused is liable to be punished. The trial Court has rightly convicted the accused for possessing 5kgs of ganja. Therefore, it requires no interference.

9. Heard the submissions made by the learned counsel appearing for the appellant and the learned Government Advocate (crl.side). Perused the documents.

10. In the case of this nature, this Court cannot expect public witness, since the gravity of the crime, the person involved in this sort of crime repel honourable persons to be as witness. Therefore, witness by police cannot be suspected as interested witness. However, when the police witness person depose, there must be consistency in their case. In this case from very inception of receiving the information and proceeding to the spot, the evidence of PW-2 and PW-3 bristles with contradictions and infirmities. The infirmity continues

throughout the case of the prosecution. The time of arrest, time of intimation and the time of mentioning the crime number before registering the First Information Report does not match with the case of the prosecution theory.

11. In the said circumstances, when the offence is graver and punishment is harsh, the investigation agency should be very vigilant and proper in adducing evidence. In this case, this Court finds that the prosecution has miserably failed to properly place evidence before the Court, which could prove the guilty of the accused. The very possession of the alleged contraband and the recovery of the same from the possession of the accused/appellant has become doubtful due to multiple infirmities in the case of the prosecution. Hence, this Criminal Appeal has to be allowed.

12. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed by the Special Judge, I Additional Special Court under NDPS Act Cases, Chennai in C.C.No.308 of 2004 dated 03.09.2012 is set aside. Fine amount, if any, paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand cancelled.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ari

To

1.The Special Judge, I Additional Special Court under NDPS Act, Chennai.

2.Inspector of Police,NIBCID, Chennai-2.

3. The Superintendent, Central Prison, Puzhal, Chennai.

4.The Special Public Prosecutor for NDPS Cases  
High Court, Madras.

5. The Section officer

Criminal Section, High Court, Madars 104.

+1 CC to Mr.T.S.Srinivasan, Advocate sr 26221.

Cr1.A.No.603 of 2012

SKV(CO)

SP(25/04/2019)