

BAIL SLIP

The Appellant Viz., K.Kalyani female, aged about 32 years, w/o.Kumar was directed to be released on bail on 29.10.2012 vide order made in M.P.No.1/2012 in Crl.A.No.687 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.687 of 2012

K.Kalyani,
W/o.Kumar,
No.992, Housing Board, Kannagi Nagar,
Thoraipakkam,
Chennai. ... Appellant/Accused

/versus/

State Rep. by
Inspector of Police,
NIB CID, Chennai. ...Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the Special Judge, I Additional Special Judge under NDPS Act, Chennai and made in C.C.No.82 of 2006 by judgment dated 03.10.2012.

For Appellant : Mr.J.Ashokan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

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J U D G M E N T

The Appellant herein was tried for offence under Section 8 (c) r/w 20 (b)(ii)(B) of NDPS Act, 1985 for alleged possession of 6 kgs of Ganja without any valid permit.

2. According to the prosecution, on 23.10.2005 at about 10.00 a.m, Mr.Murugaiyan, Sub-Inspector of Police attached to NIB CID,

Chennai received a telephonic message from his informant that one Kalyani aged about 32 wife of Kumar resident of Thoraipakkam, Chennai likely to come near wall tax Road Bus Stop near Central Railway Station with Ganja, to sell it in bulk and small quantities.

3. Based on the information, Krishnan along with the team proceeded to the spot, after getting the permission from Inspector of Police Mr.Prem Anand. The team intercepted Kalyani near Wall Tax Road, Central Railway Station, Chennai, informed her about the right u/s.50 of NDPS Act, thereafter, recovered 6 Kgs of Ganja carried by the accused. After drawing two samples from the bulk, she was intimated about her arrest. The riding team lead by Murugaiyan came back to the station. A full report under Section 57 of NDPS Act was prepared and placed before Inspector of Police Mr.Murugaiyan. The case was registered in Crime No.111 of 2005. One of the sample packets was sent for chemical analysis through the Court along with a requisition letter of the Presiding Officer. The Chemical Examiner Mr.Arulanandan (PW.1) examined the content and found that it contains cannabinoids. The charge was framed by the trial Court, based on the final report for offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act.

4. To prove the case, the prosecution has examined PW.1 to PW.5. 9 Exhibits and 3 material objects were marked. The trial Court held the accused guilty and sentenced to undergo 2 years R.I and to pay a fine of Rs.25,000/- in default to undergo one month R.I.

5. Aggrieved by the conviction and sentence the present appeal is filed.

6. The learned counsel appearing for the appellant would submit that the case of the prosecution is highly improbable. The entire documents relied by the prosecution were prepared in the station and not in the manner in which the witnesses have spoken. Though, the alleged spot of recovery is a very busy public place, the failure of the prosecution to conduct seizure and arrest in the presence of public witness throws more doubt about their case. As far as, the evidences of PW.2, PW.3 and PW.4, the persons who were part of the riding team, there is inconsistency and contradictions, which belies the case of the prosecution. The learned counsel would submit that Ex.P.4 is the notice prepared on the spot informing the accused her right under Section 50 of NDPS Act. Ex.P.5 is the mahazar for the alleged seizure and Ex.P.6 is the arrest memo. According to the

prosecution, these three documents were prepared on the spot namely Wall Tax Road Bus Stop near Central Railway Station. All the three documents are written in different hand writing indicating the scribe of these three documents are not one and the same. Except mahazar (Ex.P.5), the other two exhibits search notice (Ex.P.4) and arrest memo (Ex.P.6) were not written by Murugaiyan (PW.2). Admittedly, the other two witnesses have not identified the scribe of those two documents but they have admitted that it was not written by them. In such circumstances, it is clear that the documents were not prepared in the spot, the manner in which the prosecution witnesses have spoken. This renders the entire case of the prosecution doubtful.

7. Regarding the seizure and arrest, the learned counsel would also point out that in the arrest memo (Ex.P.6) and on the label of the seized contraband, the crime number is noted. Whereas, Murugaiyan (PW.2) admits that crime number was assigned only after the seizure was completed on the spot and the accused along with the contraband were brought to the police station.

8. Pointing out that the sequence of events, the learned counsel for the appellant would submit that according to the prosecution, the secret information Ex.P.3 was received by Murugaiyan (PW.2) at 10.00 hours on 23.10.2005. The mahazar (Ex.P.5) was drawn for the seizure of 6 Kgs Ganja at 12.00 hours. The accused was arrested at 13.00 hours. The case was registered only at 14.00 hours, whereas, the crime number is found in the label which was prepared under mahazar Ex.P.5 at about 12.00 hours. Mr.Murugaiyan (PW.2) has not explained how the crime number found in the label prepared two hours earlier to the registration of the case.

9. The other point canvassed by the learned counsel for the appellant is that, while the contraband was produced along with the accused before the Judicial Magistrate during the remand on 23.10.2015, the Magistrate has made a specific endorsement in the Form-91 that the property should be produced before the Special Judge for NDPS Court on the next working day. However, the properties were produced before the Special Court only on 10.11.2005. Mr.C.G.Prem Anand (PW.5) Inspector of Police could not gave any explanation for the safe custody of the property between 23.10.2005 to 10.11.2005. The unexplained proper custody of the contraband give room for manipulation. Hence benefit of doubt should be extended to the appellant.

10. Per contra, the learned Government Advocate (Crl,Side) appearing for the respondent/state would submit that the seizure was effected based on prior intimation. The said information was duly reduced into writing and placed before the Superior Officer. Mr.C.G.Prem Anand (PW.5) Inspector of Police has seen the information and had made endorsement, permitting Murugaiyan (PW.2) to take necessary action. Ex.P.3 which is the said information indicates the accused is likely to come carrying Ganja, this has prompted the team to proceed to the spot, mentioned by the informant. At the spot, on identification of the accused by the informant, the plastic bag carried by her was searched. The contraband found in the bag were suspected to be Ganja. Therefore, two samples were drawn, the details about the content was written in the label. The presence of crime number in the label never been admitted by the Murugaiyan (PW.2) that it was written at the spot. When there is no specific question put to the witness about the crime number found in the label, whether it was written at the spot of seizure or later. The normal practice of writing the crime number on the label for identification after registration of the case cannot be doubted. Regarding the presence of the crime number in the arrest memo, the learned Government Advocate (Crl.Side) would explain that the crime has been written in the arrest memo, while intimating the arrest to the nearest relative. This has happened after registration of the case and therefore, there is nothing doubtful or suspicion circumstances in crime number being mentioned in the arrest memo.

11. Heard the learned counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent/state.

12. The possession of Ganja has to be proved by the prosecution in the manner know to law. If the possession is proved, then the Court can presume that the possession is illegal and the accused is in possession of the contraband with knowledge and the culpable state of mind has to be presumed. But when the prosecution is unable to establish the fact that the accused had in her possession the alleged contraband and same was seized or recovered from the manner as spoken by the prosecution witnesses, then the benefit of doubt should be extended to the accused.

13. In this case, the presence of crime number in the arrest memo is admittedly prepared in the spot of arrest and prior to registration of the case. This initially creates doubt about the manner in which the seizure and arrest was done. This doubt gets enlarged by the fact that out of three witnesses for the

prosecution PW.2, PW.3 and PW.4 who were all allegedly to be present at the time of intercepting the accused to seizure and arrest, they are not certain about the scribe of the documents Ex.P.4, Ex.P.5 and Ex.P.6 which were suppose to be prepare on the spot. All the three witnesses uniformly say that it was not written by them. The only person left in the riding team is Kesavaramachandran who was not examined. Murugaiyan (PW.2) and Rani (PW.3) would say mahazar (Ex.P.5) was written by Kesavaramachandran. The hand writing of all the three documents are not one and the same. This throws further doubt in the case of the prosecution.

14. Now coming to the reference of crime number in the label affixed on the contraband, when a specific question was put to Murugaiyan (PW.2) regarding the crime number found on the label, he admits that the details found in the label was prepared on the spot. He admits the crime number also written on the label but, he has not come forward to give explanation how and when the crime number was written on the label. As a Police Officer who has headed the riding team and effected seizure, he is suppose to explain the details found on the label including the crime number which is written on the label. Now in the course of argument, the learned Government Advocate (Crl.Side) would submit that the crime number on the label will be normally written while submitting the contraband to the safe custody of the Court. This explanation is supposed to be given by the witness during trial and not at the stage of appeal by the Government Advocate. Having failed to give proper explanation regarding the crime number written on the label, all the other three factors referred above cumulatively leads to the inference that the seizure and the arrest was not done in the spot as mentioned in the exhibit or in the manner spoken by PW.2 to PW.4. When the seizure itself becomes doubtful, as pointed out earlier, the appellant has to be extended the benefit of doubt.

15. The trial Court, while considering the evidence for the prosecution case, has failed to see and appreciate the defect in the prosecution evidence in a holistic manner. Therefore, the judgment of the trial Court is liable to be set aside. Accordingly, the Criminal Appeal is Allowed. Bail Bond executed if any, shall stand cancelled.

Sd/-
Assistant Registrar (CS-VIII)

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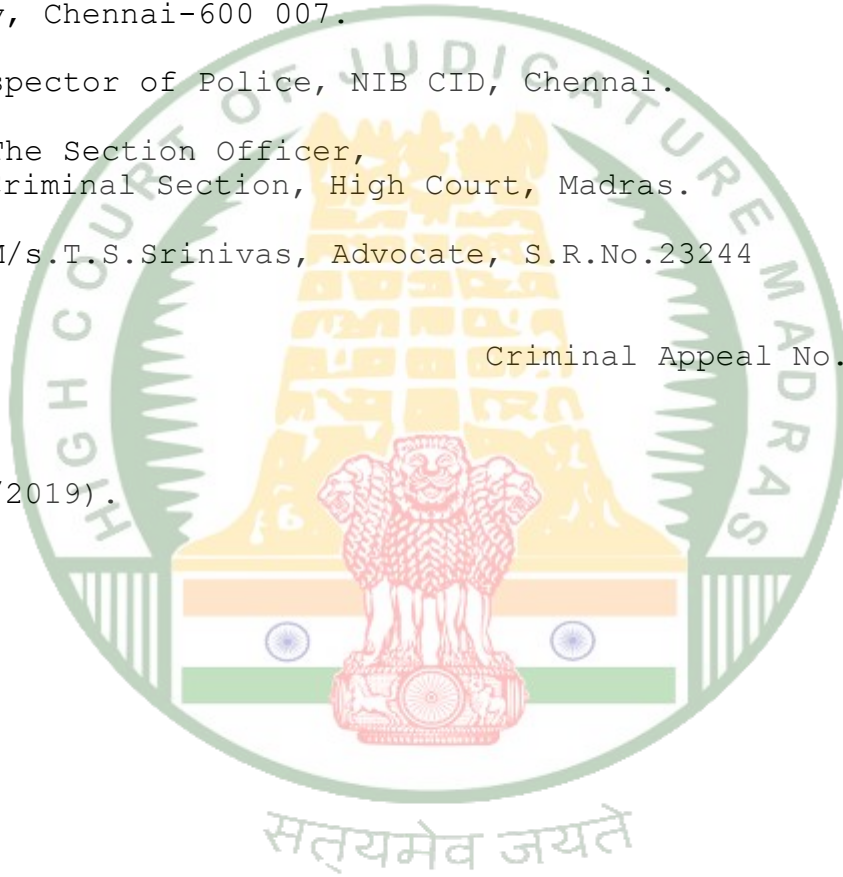
Sub Assistant Registrar

To

1. The learned Sessions Judge, Mahila Court, Chennai
 2. The I Additional Special Judge,
Special Court NDPS Act, Chennai.
 3. The Superintendent, Central Prison for women, Puzhal, Chennai.
 4. The Government Advocate (Crl.Side), High Court, Madras.
 5. The Inspector of Police, W-5, All Women Police Station,
Veppery, Chennai-600 007.
 6. The Inspector of Police, NIB CID, Chennai.
- copy to: The Section Officer,
Criminal Section, High Court, Madras.
- +1 cc to M/s.T.S.Srinivas, Advocate, S.R.No.23244

Criminal Appeal No.687 of 2012

PPA (CO)
SSM(09/04/2019).



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