

Bail Slip

CRL.A.NO.852/2012:

The appellant/Accused namely Muthulakshmi was directed to be released on bail as per order of this court dated 10/01/2013 made in Crl.Mp.No.1/2012 in CrlA.No.852/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.852 of 2012

Muthulakshmi

Appellant/Accused

Vs

The State

Rep by

Inspector of Police

NIBCID, Chennai

Respondent/Complainant

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.203 of 2005 on the file of Special Judge, I Additional Special Court under NDPS Act, Chennai dated 04.12.2012.

For Appellant : Mr. T.S. Srinivasan

For Respondent : Ms. P. Krithika Kamal, 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 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 08.11.2004, the Sub Inspector of Police attached to NIBCID received an information that one Muthulakshmi likely to come near Besant Road, Sivarajapuram Junction to sell Ganja. Recording the said information, the police team headed by Murugaiyan accompanied by Head constables and station sweeper Rani had gone to the spot.

The informant has also identified the accused who came near Besant Road, Sivarajapuram Junction. The Sub-Inspector of Police Murugaiyan intercepted the accused and informed 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 himself. Being a lady, the accused was searched by one Rani. The accused voluntarily handed over her green and gold colour bag. On opening the said bag, he found one polythene cover, which contains Ganja. After that, the contraband was weighed and found 3.200 kgs. From the bulk, 2 samples each 50 gms were drawn, packed and sealed. Mahazar was drawn on the spot. The Sub-Inspector of police has forwarded the report about Seizure and arrest to the immediate superior, as per Section 57 of NDPS Act. Thereafter, the Sub-Inspector of Police has remanded the accused to the judicial custody. The concerned Magistrate has forwarded the papers to the Special Court for NDPS Act, Chennai for trial, since the quantity seized was above small quantity.

3. The Special Court for NDPS Act cases, has taken up the Final Report and conducted the trial against the accused for offence punishable Under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985. The prosecution has examined 5 witnesses to prove the charge against the accused. 12 Exhibits were marked. Besides 3 material objects.

4. PW-1 Devaki, who is a Chemical Examiner, Grade II attached to Tamil Nadu State Forensic Laboratory had deposed about the receipt of sample from the Court with the requisition letter. After opening the seal on the cover, the substance was subjected to chemical analysis and the report says that it contains cannabinoid which is known as Ganja. Her analysis Report was marked as Ex.P.2.

5. PW-2, the Sub-Inspector of Police, who received the secret information proceeded to the spot along with his team has deposed about his role in seizure and arrest.

6. PW 3 Thananjayan, who accompanied PW-2 in the raid has corroborated the version of PW 2. Besides, he has spoken about the affixing of his signature in the Seizure Mahazar.

7. PW-4 Rani, the sweeper in the NIBCID office, accompanied the police team. She has conducted the personal search of the accused, after seizure of contraband from the possession of the accused. PW-5, the Inspector of Police, to whom PW-2 has forwarded the report about the Search and seizure had taken up the investigation. On completion of investigation, he has filed a Final Report.

8. The Trial Court after considering the evidences and the arguments submitted by the counsel appearing for the accused as well as the Public Prosecutor has held that the accused guilty of the charge and convicted her to undergo 8 months rigorous imprisonment and to pay a fine of Rs.10,000/-.

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

10. The learned Counsel appearing for the appellant would submit that the Court below has miserably failed to consider the falsity in the prosecution case. Though the alleged seizure of contraband from the accused was in the public place, they were not able to secure even one independent witness to record the process of seizure and arrest. Further more, the evidence of PW-2 is contradictory to the documents such as Seizure Mahazar and Section 57 report regarding the time of receiving the information, time of proceeding to the spot, time of arrest, time of registration of First Information Report. The patent error found on the record, contradictory to the deposition makes the manner in which the documents were prepared doubtful. It indicates that the documents were prepared not in the spot, but elsewhere.

11. The learned Counsel would also specifically pointed out that after arrest, the prosecution is bound to inform about the arrest to the relative of the accused. To make believe that they informed the relative of the accused, they have marked Ex.P.9 Telegram copy, in which the receipt issued by BSNL is pasted. While the entire occurrence took place on 18.11.2004 after 12.30 pm and arrest as per Arrest Memo was at 2.15pm, the cash receipt pasted on Ex.P.9 indicates that it was paid on 10.11.2004 at 15.42 hours.

12. The learned counsel for the appellant further pointed out that in the First Information Report itself, PW 2 has mentioned that he has already informed his immediate superior about the search, seizure and arrest thereafter he registered the First Information Report and assigned Crime Number. Whereas in Ex.P.10, the alleged report under Section 57 of NDPS Act carries the Crime Number of the case, which is highly impossible. As per record, Ex.P.10, Section 57 of NDPS Act report was anterior in point of time and subsequent to the registration of the First Information Report. While so, mentioning of Crime Number in Ex.P.10 causes great doubt about the veracity of the prosecution case.

13. Further, the learned counsel for the appellant would also point out that the contradiction regarding the place of arrest. PW 4 would say that she saw the accused near Beach road. The other evidences indicates that it is near the junction of

besant Road, Sivarajapuram 1st Street. The learned Counsel would also submits that Section 57 of NDPS Act, mandates the empowered Officers, who conducted arrest and seizure, bound to inform about the same to their immediate superior officials within 48 hours with all particulars. As far as Ex.P.10 is concerned, it was not addressed to the immediate superior of PW-2. It was addressed to the Sub-Inspector of Police, NIBCID, who is of equal rank of PW-2. Pointing out all these infirmities in the prosecution case, the learned Counsel would submit that the Judgment of the trial Court is bound to be set aside.

14. The learned Government Advocate in response to the above submissions would submit that though the seizure was conducted in public place, no independent witnesses were ready to come forward to be a witness to the proceedings. This fact has been clearly recorded in the First Information Report itself. Therefore, the accused can not fault the prosecution case for non-examination of any independent witnesses. The fact that the accused came to the spot carrying green and red colour bag, containing Ganja weighing 3.200kgs has been cogently proved. Moreover, the evidences of PW-1 to PW-4 can not be discarded, just because they are official witnesses. The accused being a lady, after seizure of contraband which she possessed in her hand, the personal search of accused was conducted by a lady in compliance with Section 100 of Cr.P.C, Section 50, body search is not having any relevance to this case, since the seizure was done in a public place and contraband was seized not from the person of the accused embedded or concealed but was carried in a hand.

15. As far as the averment of violation of Section 57 of NDPS Act is concerned, the learned Government Advocate would submit that though Ex.P.10 full report of seizure and arrest is addressed to the Sub-Inspector of Police, in fact, it was received only by the Inspector of police, who is the immediate superior to PW-2. PW-5 has made an endorsement in Ex.P.10 as "seen on 18.11.2004 at 17 hours". Thereafter, the full report having been forwarded to the immediate superior within 48 hours. There is no violation of Section 57 of NDPS Act. Regarding the receipt pasted on the telegram copy Ex.P.10, the learned Government Advocate submitted that no suggestion was put to the witnesses during the cross examination about this receipt pasted. For the 1st time, this plea is taken by the appellant. Had the witnesses been confronted with the discrepancies, he would have explained about it. Therefore, the learned Government Advocate submitted that the trial Court Judgment is in accordance with law and need not be interfered with.

16. Heard the rival submissions of the Counsels. Perused the records, exhibits and depositions.

17. The specific case of the prosecution is that PW 2 received a secret information about the transport of ganja by one Muthulakshmi W/o Thavamani, resident of M.G.R. Nagar, Chennai. Place of her proposed visit also been made known to the police by the informant. Since suspect was a lady, PW-2 has taken a lady staff working in NIBCID office along with him. Admittedly, PW-4 Rani seems to be an illiterate. Her identification of the place of search and seizure need not be accurate. Beach Road and Besant Road junction, Sivarajapuram are not too far places. They are proximate with each other. Therefore, there is no doubt to hold the presence of PW 4 at the place of occurrence.

18. The police normally undertakes the conduct of personal search after recovery of the contraband and immediate after arrest. This search has no relevance to Under section 50 of NDPS Act. The accused being a lady, the personal search conducted by PW 4, another lady is valid.

19. As far as the contention of violation in complying Section 57 of NDPS Act is concerned, this Court is satisfied that the prosecution has complied Section 57 of NDPS Act. Under this Section, the Officer who has arrested the accused should report about the arrest and seizure to his immediate superior and not to the Officer of his own rank. Though it is seen in Ex.P.10, information is addressed to the Sub-Inspector of Police, but it is to his immediate superior, who has received it and acknowledged the receipt. This lapse therefore is not a lapse leading to violation of mandatory requirement.

20. The arrest of the accused, we find not properly informed to the immediate relative of the accused. The cash receipt pasted in Ex.P.9 shows the telegram was sent 1 month earlier. This definitely exposes the lapse on the part of the prosecution, as pointed out by the learned counsel appearing for the appellant. PW 2 has not conducted the investigation to the level of normal expectation. The way in which he deposed and prepared the records clearly shows his recklessness. However, on cumulative assessment of material placed before this Court, these lapses does not inure benefit to the accused, who has indulged in a grave criminal offence of narcotic drug trafficking.

21. In the light of the above discussions, Judgment of the trial Court is confirmed. However, considering the age of the appellant/accused, this Court is of the opinion that 8 months rigorous imprisonment is to be modified. Therefore, the lower Court Judgment of conviction and sentence is modified. The appellant/accused is ordered to undergo 3 months rigorous

imprisonment. No change in the fine amount. Period of sentence already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CS III)

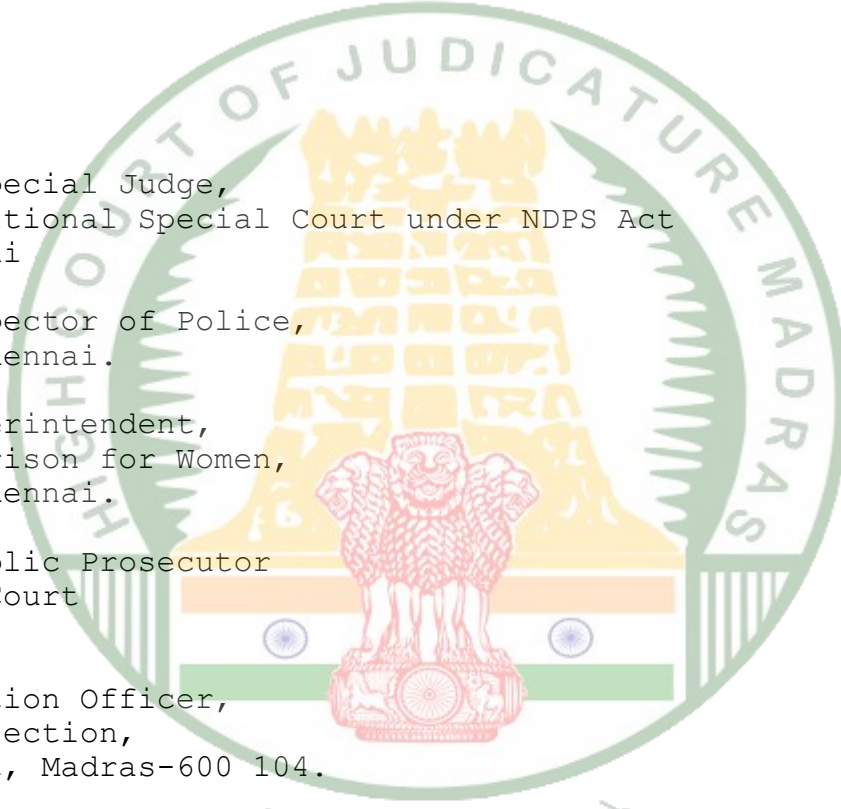
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Sub Assistant Registrar

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To

1. The Special Judge,
I Additional Special Court under NDPS Act
Chennai
- 2.The Inspector of Police,
NIBCID, Chennai.
- 3.The Superintendent,
Central Prison for Women,
Puzhal, Chennai.
4. The Public Prosecutor
High Court
Madras
- 5.The Section Officer,
Criminal Section,
High Court, Madras-600 104.



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NR 19/03/2019

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