

Bail Slip

The Appellant/Accused namely Latha, aged 46 years W/o.Muthu, was directed to be released on bail as per order of this court dated 09.01.13 in Crl.MP.No.1 of 2012 in Crl.A.No. 905 of 2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :15.02.2019

CORAM:
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.905 of 2012

Latha

... Appellant

Versus

Inspector of Police,
NIB, CID
Chennai

....Respondent

Criminal Appeal has been filed under Section 374 Cr.P.C r/w Section 36-B of NDPS Act 1985 praying to set aside the conviction and sentence rendered by the I Additional Special Judge for NDPS Act, Chennai dated 15.12.2012 in C.C.No.101/2007 in Crime No.66/2006 for offence U/s 8(c) r/w 20(b)(ii) (B) of NDPS Act and may be pleased to acquit the accused.

For Appellant : Mr.M. Ramesh

For Respondent : Mr.T.Shunmuga Rajeswaran, APP

JUDGMENT

Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.

2.This appeal arises out of conviction under NDPS Act for possession of 2.000 kgs of ganja without any valid permit. The Trial Court has sentenced the appellant to undergo Seven Months Rigorous Imprisonment and to pay a fine of Rs. 5,000/- in default, to undergo further period of one months Rigorous Imprisonment. The period of imprisonment already undergone by the accused as under trial prisoner shall be set off under Section 428 of Cr.P.C.

3. The case of the prosecution is that following information received by PW-1 [Malaisamy], Sub-Inspector of Police attached to NIB CID, Chennai, on 21.09.2006 at about 10.00 hours, he reduced the information into writing and forwarded the same to the immediate Superior R. John Joseph, Inspector of Police [P.W.5]. Permission was granted to PW-1 to proceed and apprehend the suspect. Accordingly, Malaisamy[P.W.1] proceeded to the named spot viz., Nelson Manickam Road and Namasivarapuram new Bridge, Soolaimedu, Chennai-94 along with his team members consisting of two Constables and one Woman Sweeper Shoba Rani, attached to NIB CID, Chennai. They mounted surveillance in the spot. At about 11.15 hours, the informant identified the accused Latha, who was carrying a white colour polythene bag in her right hand. P.W.1[Malaisamy] arrested and interrogated her. One Baby, Fruit Seller and Kannan, Groundnut Seller in pushcart were requested by him to be witnesses, but they refused.

4. Therefore, with the members of the trap team, he proceeded with the search and seizure process. After informing the accused of her right to be searched before the Judicial Magistrate or the Gazetted Officer, as per provisions of Section 50(1) of NDPS Act, he requested Shoba Rani to conduct personal search of the accused, after recording the answer to the option given under Section 50(1) of NDPS Act, the white colour polythene bag carried by the accused was found to contain 2.000 kgs of ganja. From that, two samples each containing 50gms were drawn and packed in two separate covers. The sample packets were labelled with details and signature of the witnesses were obtained on the sample packets. At about 13.00 hours, the accused was arrested and brought to the station. The details of seizure and arrest was recorded by PW1[Malaisamy] and forwarded the same to his immediate Superior [P.W.5, John Joseph] as per Section 57 of NDPS Act. One of the samples was forwarded to the Tamil Nadu Forensic Science Laboratory for chemical analysis. The report reveals that the substance seized from the accused contains cannabinoid. Before the Special Court for NDPS Act cases, final report was filed, after completion of investigation. The trial Court framed charges under Section 8 (c)r/w20(b) (ii) (B) of NDPS Act against the accused.

5. On the side of the prosecution, six witnesses were examined as PW-1 to PW-6. They are the Sub Inspector of Police, Malaisamy; Head Constables, who accompanied with PW-1, Shoba Rani, Sweeper attached to NID CID, who conducted the personal search of the accused; and John Joseph, Inspector of Police, the Immediate Superior of PW-1, who received the secret information from PW-1 and full report of seizure and arrest under Section 57 of NDPS Act. He took up the investigation. The scientific officer attached to Forensic Laboratory, who

conducted the chemical analysis of the sample forwarded to the laboratory was examined as PW-4 [Krishnamurthy] and his report was marked as Ex.P7.

6. The trial Court, after appreciating the evidence placed before it, has found that the prosecution has proved beyond doubt that the accused was found in possession of 2.000 kg of ganja and the same was recovered pursuant to the secret information (Ex.P1) received by PW-1. The seizure of the contraband from the accused has been recorded under mahazar [Ex.P3] in the presence of the witnesses and the witnesses have deposed about the fact. The trial Court has held that the prosecution has proved guilt of the accused beyond reasonable doubt. Aggrieved by the conviction, the present appeal has been filed.

7. The learned counsel appearing for the appellant would submit that PW-1[A.Malaisamy], who is alleged to have recorded the information on 21.09.2006 at about 10.00 hours, had not taken any serious effort to secure independent witnesses to oversee the search and seizure operation. The absence of the public witnesses during the search and seizure renders the prosecution case doubtful.

8. The learned counsel appearing for the appellant would also submit that the alleged contraband seized from the accused was not forwarded to the Court immediately. There was a delay of 27 days, which was not properly explained by the prosecution. When the prosecution is unable to explain the proper custody of the contraband, the benefit of doubt has to be extended to the accused.

9. Per contra the learned Government Advocate (Crl.side) would submit that the contention raised by the appellant regarding absence of public witnesses is untenable and contra to the facts found on record. He would submit that deposition of P.W.1[Malaisamy] establishes that as soon as the accused was identified by the informant, though he attempted to secure two independent witnesses in that locality, those two persons, after disclosing their names, refused to stand as witnesses and therefore, he was forced to proceed with the search operation in the presence of his team members. In order to comply with the mandatory requirements under Section 50(4) of NDPS Act, the accused was subjected to the personal search by the lady. Since the contraband was not seized from the accused embodied in her body or concealed in her body, there is no violation of statutory provisions either under Section 50 of NDPS Act or Section 100 of Cr.P.C.

10. As far as the delay in forwarding the contraband is concerned, the learned Government Advocate would submit that the property seized from the accused was presented before the Metropolitan Magistrate along with the remand report Ex.P9. Pointing out the endorsement made in Ex.P10, the learned Government Advocate would submit that the learned Magistrate directed him to produce the property before the Regular Court and affix her signature with date and thereafter, the property was presented before the Special Court along with the requisition letter to send the samples for chemical analysis. Hence, there is no delay in forwarding the property seized from the accused as alleged by the appellant.

11. Heard the learned counsel appearing for the appellant as well as the learned Government Advocate (crl.side) and perused the documents and depositions of the prosecution witnesses.

12. It is a case of seizure based on specific information. Based on the information given by the informant, P.W.1 has reduced the information in to writing and forwarded the same to his immediate Superior Officer. Ex.P1 indicates that the information reduced in to writing was sent by P.W.5 [R.John Joseph], who in turn made an endorsement "seen and permitted at about 10.15 hours on 21.09.2006". Thereafter, PW1 and his team have gone to the spot and mounted surveillance at the spot. After intercepting the accused, she was informed about her right under Section 50 of NDPS Act. The information of her right has also been reduced in to writing. Since she has declined to exercise this option, her response to the information has also been recorded. Her signature has been obtained in it. So, Ex.P2 goes to show that PW-1 has complied with the mandatory requirements under the statute regarding search of the person.

13. The case of the prosecution is that the seizure was effected in a public place. The contraband found in possession of the accused was carried in her hand. Therefore, for a search in the public Section 43 of the Act alone is applicable.

14. Regarding the alleged delay in forwarding the samples and bulk to the Court, the endorsement in Ex.P10 Form-95 made by the Metropolitan Magistrate Court clearly proves the fact that the prosecution has not withheld the property from the notice of the Court. Only as per the direction of the Court, the property has been taken back to be presented before the Regular Court. Hence, on this ground also the plea of the appellant is bound to be rejected.

15. The learned counsel appearing on behalf of the appellant would submit that the appellant being a lady and she is the first time offender, leniency may be shown regarding the period of sentence.

16. The learned Government Advocate would submit that the appellant was in jail for 42 days before conviction as under trial prisoner and 27 days after conviction, till suspension of sentence was granted to her.

17. Taking into consideration, the gender and the other submissions made by the learned counsel for the appellant, this Court modifies the period of sentence alone. The period of imprisonment is reduced to three months Rigorous Imprisonment in stead of seven months Rigorous Imprisonment. The respondent police is directed to secure the appellant and to commit her into prison for the remaining period of sentence imposed by this Court. Fine amount imposed by the trial Court shall remain unaltered. Bail bond, if any, executed by the appellant, shall be cancelled. The period of sentence already undergone by the appellant is set off.

18. Accordingly, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. Additional Special Judge for NDPS Act,
Chennai.
2. The Inspector of Police, NIB,
CID, Chennai.
3. The Superintendent,
Central Prison for women,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.

Cr1.A.No.905 of 2012

BS(CO)

rrs 19/03/2019