

BAIL SLIP

The Appellant/Accused No.1 & 2, Ravanan, S/o. Murugesan and Kala, W/o. Ravanan were directed to be released on bail as per order dated 19.03.2015 and 21.04.2015 in M.P.No.1 of 2015 and M.P.No.2 of 2015 in CrI.A No.142 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM: :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.142 of 2015

1. Ravanan,
S/o. Murugesan,

2. Kala,
W/o. Ravanan,

Both are residing at
No.395, 14th Block,
P.K.Colony, Pulianthope,
Chennai-12.

... Appellants/Accused 1 & 2

/versus/

State rep. by:-

The Inspector of Police,
P1, Pulianthope Police Station,
Chennai.

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, praying to set aside the conviction and sentence passed by the Principal Special Court under EC & NDPS Act, Chennai and made in C.C.No.32 of 2002 by judgment dated 05.03.2015.

For Appellants : Mr.G.S.Mahesh
for T.S.Srinivasan

For Respondent : Mrs.Kritika Kamal.P
Government Advocate

J U D G M E N T

The Appellants herein are husband and wife. They both were found guilty of offence under Section 8 (c) r/w 20 (b) (ii) (B) of NDPS Act, for alleged possession of 2 Kgs of Ganja.

2. The case of the prosecution is that on 11.11.2000, PW.2, Sub-Inspector of Police based on the information received at 10.00 a.m proceeded to Ambedkar Nagar College Road - Stephen Road junction had conducted vehicular check, an auto bearing registration No.TN-01-A-8744, when intercepted, the driver of the auto whose name later came to be known as Anandhan, fled from the place. Two passengers in the Auto namely Ravan and Kala were found in possession of 2 Kgs of Ganja, which was recovered under mahazar. The sample was drawn from the pocket and separately sealed. The sample contraband was sent for chemical analysis, the report reveals that it contains cannabinoid, a chemical substance present in Ganja.

3. To prove the charge, the prosecution has examined 7 witnesses. Marked 14 Exhibits and one material object.

4. The case of the prosecution as spoken by the witnesses is that Subbiah (PW.2), Sub-Inspector of Police received information over phone from his informant about the trafficking of Ganja. He, on receipt of information made a request to his immediate superior Mr.Vijayaravan, (PW.3), Inspector of Police, to permit him to conduct vehicular check between 10.00 hours to 13.00 hours, on 11.11.2000 near Ambedkar Nagar College Road - Stephen Road junction. Mr.Vijayaravan, (PW.3) Inspector of Police has accorded permission to conduct vehicular check, as sought by PW.2. The said request letter and permission is marked as Ex.P.3. Thereafter, PW.2 along with the team of Constables had reached the spot and conducting vehicular check. At that time, the auto with the accused persons came near Ambedkar College Road - Stephen Road junction, on seeing them, the driver of the auto fled from the place, deserting his auto. On interrogation, the passengers in the auto disclosed their name as Ravan and Kala. The name of the auto driver who fled from the scene is Anandhan and he is the brother of Ravan. They admitted that they have procured 2 kgs of Ganja, from a known person at Madhavaram. When they were informed about their right to be searched before the Magistrate or a Gazette Officer, they declined to exercise the said option.

They said that, they know PW.2 Subbiah, Sub-Inspector of Police attached to Pulianthope Police Station and he himself can search them. Thereafter, the white colour polythene bag was recovered from them, since they found Ganja in it. Both Ravan and Kala

was arrested on the spot. The seized contraband was weighed in the scale kept in the nearby Bakery. They ascertained it weighs 2 kgs of Ganja. From out of that, 50 grams was drawn for chemical analysis. The recovery was done in the presence of independent witnesses Sankar and Munusamy. The accused persons were brought to the police station, F.I.R was registered and thereafter PW.2 has forwarded a detail report to his superior, both to Inspector of Police and to the Assistant Commissioner of Police. The reports are marked as Ex.P.11 and Ex.P.13.

5. The trial Court has accepted the case of the prosecution that based on the information, PW.2 has proceeded to the spot with the permission of PW.3 and had conducted the search and seized 2 kgs of Ganja from the accused persons. The deposition of PW.2 being corroborated by the evidence of RadhaKrishnan (PW.5) Grade-I, Constable and Jacob Raj, (PW.6) Grade-I Constable, coupled with the chemical analysis report which has disclosed the presence of cannabinoid, a chemical substance present in Ganja held the charges framed, based on the final report for offence under Section 8(c) r/w 20(b) (ii)(B) of NDPS Act proved and sentenced A1 and A2 to undergo two years R.I. and to pay a fine of Rs.10,000 each, in default to undergo 2 months R.I.

6. Aggrieved by the said judgment, the accused persons have preferred the appeal alleging that the trial Court has miserably failed to consider the mandatory violation of the prosecution. When the case of the prosecution is that on 11.11.2000, PW.2 Subbiah has received an information about the illegal transporting of Ganja in vehicle, the said information ought to have been reduced into writing as mandated under Section 42 of the NDPS Act. Neither PW.2 (Subbiah), Sub Inspector of Police who has conducted search, seizure and arrest, nor PW.3 the Inspector of Police who has taken up the further investigation has reported to their immediate superior as contemplated under Section 57 of the NDPS Act. The property alleged to have been seized from the accused were not marked. The evidence of PW.7 (Baskaran), Head Clerk of the Court regarding the missing of case properties will not excuse the lapse of prosecution, when the alleged corpus delicti not been produced to the Court by the prosecution. More particularly even the remanent sample received back from the laboratory was not marked. In fact, PW.7 (Baskaran), the Court staff has categorically deposed that the Court did not received the remanent sample from the laboratory. Therefore, for violation of mandatory requirements and non-production of contraband, the appellants are entitled for acquittal.

7. Per contra, the learned Government Advocate appearing of the respondent/state would submit that though PW.2 (Subbiah) had

proceeded to Ambedkar College road - Stephen road junction, based on information and on permission from his immediate superior, the information received by him is vague and not specific. Therefore, the mandate of Section 42 (ii) does not get attracted, more particularly, when the seizure was done in a public place. Further, the learned Government Advocate for the respondent/state would also submit that there is no violation of Section 57 in this case. Since, under Ex.P.10 and Ex.P.11, the full report of search, seizure and arrest has been communicated to the respective superior Office by PW.2. Regarding the case property, the Government Advocate for the respondent/state would submit that Form-95 and the chemical analysis report clearly indicates that the properties were submitted to the Special Court. Through PW.7, it has been proved that due to some misconduct of the Property Clerk of the Special Court, Chennai, some of the case properties were missing and departmental enquiry was initiated against him and action was taken. Merely because the case property gone missing, the accused cannot get acquittal when it is proved that 2 kgs of Ganja was recovered from the accused during the vehicular check under mahazar and same was produced before the Magistrate, immediately. On the direction of the Magistrate, the same was produced before the Special Court subsequently. Through the Court, along with the requisition letter, the sample packet was sent to the laboratory. PW.1 has conducted analysis of the substance and given a report marked as Ex.P.2.

8. The Learned Government Advocate appearing for the state submitted that a cumulative reading of the Court request letter Ex.P.1, the laboratory report Ex.P.2, deposition of PW.1 (Vijaya), the Chemical examiner and the deposition of PW.7 (Baskaran), Head Clerk would go to show that 2 kgs of Ganja was recovered from the accused and same was produced to the Court, the sample drawn from the bulk was forwarded to the laboratory along with the requisition letter of the Court and laboratory report (Ex.P.2) was received pursuant to the analysis. Therefore omission to mark the contraband due to reasons stated has not caused any prejudice to the accused.

9. The learned Government Advocate appearing for the respondent/state would further submit that vague information and seizure in a public place take away the rigour of Section 42 of NDPS Act and the action of the 2nd accused falls under Section 43 of NDPS Act. Therefore, there is no mandatory violation. Section 42 of NDPS Act reads as below:- "Section 42. Power of entry, search, seizure and arrest without warrant or authorisation:-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise,

narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug (emphasis added) or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset;

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and;

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and

search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior." (emphasis added)

10. It is a case where PW.2 has proceeded to the spot, on receiving information that there is likelihood of drug trafficking near the Ambedkar College road - Stephen Road junction. While so, it cannot be construed as a vague information. Particularly when the informant has specifically informed him about the place and manner in which the drug is likely to be transported. Having received such information, PW.2 has failed to reduce the same into writing, which is mandatory under Section 42(1) of NDPS Act. Also he has not forwarded the same to his superior as mandated under Section 42 (2) of NDPS Act.

11. What he has submitted to his immediate superior PW.3 Inspector of Police is a request letter seeking permission to conduct vehicular check. In that request letter, he has referred about information received by him from reliable source. Pursuant to his request, PW.3 has granted permission for vehicular check. Based on this permission, the team of police headed by PW.2 has proceeded to the spot mentioned by the informant and had intercepted the auto travelled by the accused. They have recovered the alleged 2 kgs of heroine, kept in the auto, in which the appellants were travelling. The seizure mahazar which is marked as Ex.P.7, is witnessed by two persons by Sankar and Munusamy. Strangely both these two witnesses for recovery not examined. Further, the mahazar also does not carry the signature of the accused persons, so that to correlate the seized article with that of the accused persons. The conspicuous absence of the accused signature in the mahazar gains significance, because of the fact that the contraband alleged to have seized is reported missing. While so, at least to hold that there was something recovered from the accused persons, the seizure mahazar ought to have contain the signatures of the accused persons or at least the prosecution should have examined the independent witnesses to substantiate their case. In the absence of any evidence to corroborate either directly or indirectly, to prove the recovery, the non-marking of the corpus delicti gains significance. Therefore, the failure to record the information received, the failure to forward the information to immediate superior and the failure to

prove recovery of Ganja from the accused are together fatal to the prosecution case.

12. Therefore, the Criminal Appeal is Allowed. The finding of the Court below is set-aside. Bail Bond stand discharged. Fine paid if any, paid by the appellants are refunded.

bsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Special Judge,
EC & NDPS Act,
Chennai.

2. The Inspector of Police,
P1, Pulianthope Police Station,
Chennai.

3. The Superintendent,
Central Prison for Women,
Puzhal, Chennai - 66

4. The Public Prosecutor,
High Court, Madras.

5. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.T.S.Srinivasan, Advocate, SR.No.40275

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Kak(24/06/2019)