

Bail Slip

The Petitioner/Accused viz., R.Rani, was released on bail as per the order of this Court dated 22/01/2013 in CrI.M.P.No.1 of 2013 in CrI.A.No.37 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 30.08.2018	Date of pronouncing Judgment 12.11.2019
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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.37 of 2013

R.Rani

..Appellant/Petitioner

Vs.

The Inspector of Police
NIB, CID
Chennai
(Cr. No.44 of 2003)

.. Respondent/Complainant

Appeal filed u/s.374 of Cr.P.C. r/w. Section 36-B of NDPS Act, against the Judgment of conviction and sentence passed by the learned Principal Special Judge, Special Court for NDPS Act, Chennai, in C.C.No.4 of 2004 dated 12.04.2012.

For Appellant : Mr.V.Ganesh

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

Judgment

The respondent police registered a case against the appellant in Crime No.44 of 2003 for the offence under Section 8 (c) r/w.20(b)(ii)(B) of NDPS Act and after completing investigation, laid the charge sheet before the Special Court. The learned Special Judge, after taking the charge sheet on file in C.C.No.4 of 2004 and after completing the formalities, framed charges against the appellant for the above Sections of the offence.

2. In order to prove the case of prosecution, during trial, on the side of prosecution, as many as 4 witnesses were examined as PW.1 to PW.4 and 12 documents were marked as Exs.P1 to P12 besides 3 Material Objects. After completing the prosecution witnesses, when incriminating circumstances culled out from the evidences of prosecution witnesses were put before the accused/appellant, he denied as false. On the side of defence, no oral and documentary evidence was produced.

3. After completing the trial and hearing arguments advanced on either side and on perusal of the records, the learned Special Judge found the appellant as guilty for the above referred offence and convicted the appellant for the offence under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and sentenced him to undergo 2 years Rigorous Imprisonment and imposed a fine of Rs.25,000/-, in default to undergo 6 months Rigorous Imprisonment.

4. Challenging the said judgment of the learned Special Judge, the convict has preferred the present Appeal before this Court.

5. Heard both sides. Perused the records.

6. The learned counsel for the appellant would submit that during the search and seizure, there was no independent witness examined; as the seizure alleged to have been made by the respondent was a public place, no efforts were made by the respondent to call independent witness in order to attest the seizure. The seized contraband was produced before the trial Court after a gap of 23 days, where the contraband was kept, there is no explanation either from PW.2 or PW.4 in this regard, when questions were asked during the time of cross examination, PWs.2 and 4 have stated in their cross examination specifically admitted that where the contraband was kept. There is a delay in sending the seized contraband to the chemical analyst and there is a delay of 23 days in sending the sample to the chemical analyst from the trial Court and there is no explanation from PWs.2 and 4 - Seizure Officer and Investigating Officer of the respondent police. The arrest memo served on the appellant in Crime Number finds a place in the arrest memo. The property was seized on 24.06.2003, but the property was produced before the trial Court after a gap of 23 days, in the mean time, where it was kept and in whose custody it was kept, there is no explanation by the prosecution. Further, the learned counsel for the appellant would submit that PW.2 has stated in his cross examination that Exs.P3, 4, and 5 were written by PW.3 woman constable, but when PW.3 woman constable was cross examined as

to whether she has written Exs.P3, 4, and 5, she has stated that she does not know, who has written the documents, hence, there is clear contradiction in the versions of PWs.2 and 3. When there is a material contradiction in this case, the prosecution has failed to prove its case beyond reasonable doubt, whereas the learned Special Judge failed to consider all the legal as well as factual aspects and convicted the appellant, which warrants interference of this Court.

7. The learned Government Advocate (Crl. Side) appearing for the respondent/State would submit that PW.2 is the Sub-Inspector of Police, who was working in the respondent police station at the relevant point of time and he has clearly stated about the occurrence and also the procedures adopted by them during the search and recovery and also the report filed under Section 57 of the NDPS Act before PW.4 - Investigating Officer. Further, PWs.2 and 3 have clearly explained under what circumstances, they could not secure the independent witnesses and also stated that the alleged contrabands were immediately produced before the learned Magistrate Court and at the direction of the learned Magistrate only, the respondent police produced the contrabands before the Special Court and further they made the request to the Special Court to send the sample contrabands for chemical analysis. Therefore, the evidence of PW.1 clearly shows that the seals contained in the sample packs are intact and there was no tampering and therefore, there is no reason to create suspicious over the sample pack, which was sent to the Forensic Laboratory belatedly. Therefore, there is no prejudice caused to the appellant in this case. The respondent police meticulously followed all the procedures, as contemplated under the NDPS Act. The prosecution has examined the relevant, necessary witnesses and also proved its case through cogent and reliable evidence. The trial Court also convinced with the case of the prosecution and also the oral and documentary evidences produced by the prosecution and found the guilt of the appellant and convicted the appellant for the offences under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act and also sentenced him to undergo 2 years Rigorous Imprisonment and imposed a fine of Rs.25,000/-, in default to undergo 6 months Rigorous Imprisonment. There is no reason to interfere with this.

8. On reading of the entire materials, it is found that the case of the prosecution is that on 24.06.2003 at about 9.15 a.m, at Vyasarpadi - Erukkancheri Highways Road, near Jothi Ramalinga Swamigal Temple, the appellant was found in possession of 3 Kg of ganja without any valid permit or licence. PW.2, after getting secret information from the informant, reduced the same into writing and placed before PW.4 and after obtaining

necessary directions from PW.4, PW.2 went to the spot along with PW.3 and where the appellant was roaming in suspected manner. On the identification made by the informer, PW.2 introduced himself with the appellant and since the appellant was a lady, in the presence of PW.3, she was enquired and she herself voluntarily surrendered the contraband and therefore, after completing the legal and procedural formalities, they recovered the contraband and also after completing all the procedures, filed a report under Section 57 before PW.4. PW.4 registered the case against the appellant and forwarded the same to the learned Magistrate. After completing investigation, PW.4 laid the charge sheet before the learned Special Judge. The learned Special Judge, after trial, convicted the appellant, against which the convict has filed the present Appeal before this Court.

9. On reading of the evidence of PW.2, who was working as Sub-Inspector of Police at the relevant point of time, ie., on 24.06.2003, when he was on duty at 8 a.m, in the respondent police station, at that time, he received secret information from the informant over phone and the said information was reduced into writing by him in the Register and placed before PW.4 and as per his direction, he went to the spot along with the team of Head Constables and they left from the police station at about 8.30 a.m and also reached the spot at 9'0 clock and at about 9.15 a.m, when they were surveilling, they found one lady, who suspiciously came there with white colour polythene bag in her hand and therefore, PW.2 introduced himself with her and also identified and enquired about her and also in and around persons were called to stand as a witness, since none came forward to stand as witness, PW.2 asked the Head Constables, who were accompanied with PW.2 as witnesses and also PW.2 stated about the right of the appellant under Section 50 of the NDPS Act for searching her, either she has to be searched before the Gazetted Officer or the Judicial Magistrate, for which she has stated that no need to her to be brought either before the learned Magistrate or Gazetted Officer, PW.2 himself can search. Since the appellant being the lady, she was searched by PW.3, lady Head Constable and 3Kg Ganja was found in her polythene bag and the bag surrendered by the appellant was recovered through the Mahazar and also subsequently, two samples, each 50gm were taken from the contraband and sealed and labelled in accordance with law and obtained signatures from the appellant and also the official witness. Subsequently, the appellant was arrested and the same was intimated to her relatives and after that, PW.2 preferred a report under Section 53 of NDPS Act and submitted before PW.4 - Investigating Officer. PW.4 registered the case in Crime No.44 of 2003 and forwarded the appellant along with the contraband and First

Information Report to the learned Magistrate and subsequently, at the request made by the police, the Special Court sent the samples to the Forensic Laboratory for chemical analysis. Subsequently, after completing investigation, PW.4 laid the charge sheet.

10. PW.3 - woman Head Constable, who had accompanied with PW.2 at the time of search, also corroborated the evidence of PW.2. PW.1 is the chemical analyst, who has clearly spoken that his office received sample pack from the Special Court through the Head Constable Mr.Hari Om Namasivayam, as per the directions of the Special Court on 14.07.2003 and he has also clearly stated that the pack was weighing about 50gm and from the sample pack, she took 15gm for analysis and remaining 35gm sent to the Court. At the time of receiving the sample pack, it was intact and the same was labelled and the seal was intact and after analysing, he found that the sample pack contains substance of Ganja and he also filed report and the said report was marked as Ex.P2.

11. From the reading of evidences of PWs.1 to 3, the prosecution has proved its case with cogent and reliable evidence and the trial Court also convinced with the same.

12. Though the learned counsel for the appellant would submit that there is 23 days delay in sending the sample and they have not explained 23 days delay in sending the samples to the Forensic Laboratory and also in the mean while where the sample was kept, therefore, it creates suspicious that the sample could have been tampered by the police in order to foist the case against the appellant, on reading of the evidence, the contraband was produced before the learned Magistrate on the same day and in turn, the learned Magistrate directed to produce the same before the Special Court, thereafter, they approached the Special Court to send the contraband. Therefore, after producing the samples to the learned Magistrate, since the learned Magistrate returned the goods to produce before the Special Court, they kept the same and therefore, that cannot be the reason to disbelieve the case of the prosecution. On perusal of Ex.P11, the contraband was produced before the learned Magistrate on 24.06.2003 itself, the date on which the contraband was seized and therefore, there is no delay in producing the material before the learned Magistrate. The learned Magistrate returned the contraband to the respondent police and directed to produce the same before the Special Court on 14.07.2003 and on the same day itself, the sample was sent to the Forensic Laboratory. Therefore, there is no delay in producing the sample. On the direction of the Court only, the

respondent police kept the samples. Therefore, the contention raised by the learned counsel for the appellant is not acceptable.

13. PWs.2 and 3 have clearly stated that before seizing of the goods, they have called for the independent witnesses. Since no one has come forward to stand as witness, they could not secure the independent witness and further, the evidence of PW.2 has clearly shows that before search, the right of the accused under Section 50 of the NDPS Act was clearly explained to her and she also understood the same and also notice under Section 50 of the NDPS Act was issued to the appellant and she also received the notice and the appellant also understood the same and she was not ready to go before the learned Magistrate or Gazetted Officer for search, instead she asked PW.2 that he himself can search her. Since she being the lady, she was searched by PW.3- woman Head Constable.

14. On a perusal of the entire oral evidence and the Exhibits marked by the prosecution, the prosecution has followed the mandatory provisions of Sections 42, 50 and 57 of the NDPS Act and also all the provisions contemplated under the NDPS Act are meticulously followed by the respondent police. Also the evidence of PW.1 clearly shows that the sample pack contained the substance of Ganja and his report Ex.P2 has also clearly proved the same. Therefore, on reading of evidences of PWs.1 to 4 and the documents Exs.P1 to P12 and M.Os.1 to 3, this Court finds that the prosecution has proved its case beyond reasonable doubt with cogent and reliable evidence. This Court also convinced that the prosecution has proved its case beyond reasonable doubt and that the appellant found guilty for the offence under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act. The trial Court also has elaborately discussed about the case of the prosecution and the oral and documentary evidences produced by the prosecution and found guilt of the appellant and convicted and sentenced her as stated above and this Court does not find any perversity in the judgment of the trial Court and there is no violation of the mandatory provisions and therefore, this Court finds there is no merit in the appeal and the appeal is liable to be dismissed and accordingly, the appeal is dismissed.

15. In the result, the Criminal Appeal stands dismissed and the conviction and sentence passed by the learned Principal Special Judge, Special Court for NDPS Act, Chennai, in C.C.No.4 of 2004 dated 12.04.2012 is hereby confirmed. The period of sentence already undergone, if any, by the appellant/sole accused shall be set off under Section 428 Cr.P.C. The trial

Court is directed to secure the appellant to undergo the remaining period of the sentence.

Sd/-

Assistant Registrar

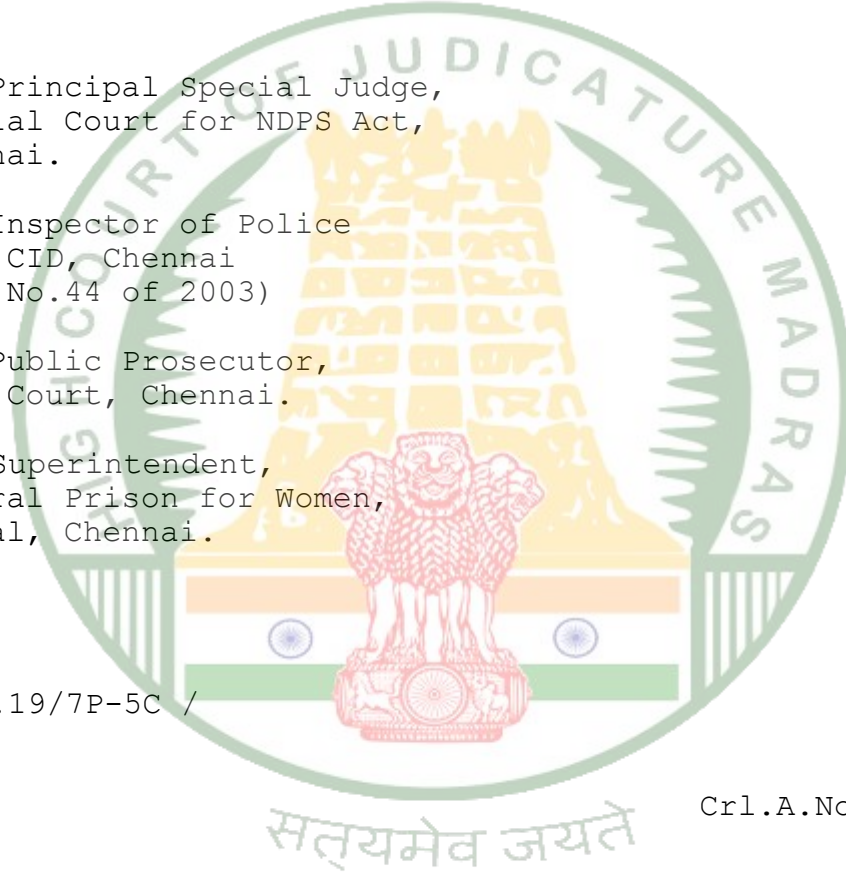
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Sub Assistant Registrar

To

1. The Principal Special Judge,
Special Court for NDPS Act,
Chennai.
2. The Inspector of Police
NIB, CID, Chennai
(Cr. No.44 of 2003)
3. The Public Prosecutor,
High Court, Chennai.
4. The Superintendent,
Central Prison for Women,
Puzhal, Chennai.

AKM/13.12.19/7P-5C /



Judgment in
Crl.A.No.37 of 2013

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