

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.108 of 2019

Karthikeyan

... Appellant/1st Accused

Vs

State Rep.by
The Assistant Commissioner of Police,
NIB, CID, Chennai - 39.
Crime No.24 of 2010.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence made in C.C.No.87 of 2010 dated 22.04.2016 passed by the learned Special Judge, I-Additional Special Court under NDPS Act, Chennai.

For Appellant : Mr.A.K.Manojkumar

For Respondents : Mr.R.Ravichandran
Government Advocate (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed by the appellant to set aside the order dated 22.04.2016 made in C.C.No.87 of 2010 passed by the learned Special Judge, I-Additional Special Court, Chennai under NDPS Act. सत्यमेव जयते

2. The Case of the prosecution is that based on the information received by the informant in person, the Inspector of Police, NIBCID, on 27.03.2010, proceeded to Vadapalani East Bus stop, Chennai. On 28.03.2010 while monitoring the bus stand at about 12.30 p.m., the informant identified the Tata Tanker Lorry bearing registration No.TN 59 AJ 7489. The police officers stopped the vehicle and surrounded it. At that time, the driver of the lorry tried to escape from the place. Thereafter, the police team searched the lorry and found 2030 KG of Ganja. The same was seized by the Police, samples were taken and the samples were packed and sealed in NCB seal. The appellant was arrested and produced before the learned XVII Metropolitan Magistrate, Saidapet for judicial custody. The Assistant

Commissioner after completing the investigation, filed charge sheet against the appellant for the offence under sections 8(c) read with 20(b)(ii)(c), 25 and 29 of Narcotic and Psychotropic Substances Act (hereinafter referred to as NDPS Act) and the same was taken on file. The learned Additional Special Court under NDPS Act, Chennai in C.C.No.87 of 2010 against the A1 and A2 viz., Karthikeyan and Pawn Pandian, framed charges for the offences made sections 8(c) read with 20(b)(ii)(c), 25 and 29 of NDPS Act. In order to prove its case, the prosecution examined as many as 11 witnesses viz., P.W.1 to P.W.11 and marked 28 documents viz., Ex.P1 to Ex.P28 and produced 352 material objects viz., M.O.1 to M.O.352. After completion of prosecution evidences, the incriminating materials were put before the accused and they denied all the evidences as false.

3. On the side of the Appellant, no oral evidence or documentary evidence was produced. The learned Special Judge after hearing the arguments, convicted the appellant under Section 8(c), read with Section 29, under Section 25 and under Section 8(c) read with Section 20(b)(ii)(c) of NDPS Act and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-, in default, to undergo simple imprisonment for a period of two years. Against the judgment of the learned Special Judge, the appellant alone has preferred the present appeal.

4. The learned counsel for the appellant would submit that the prosecution has not complied with the mandatory provisions under Section 42 of the N.D.P.S. Act and the person who is alleged to have searched the appellant/accused is not the competent person. Notice under Section 50 of NDPS Act was not given to the appellant before the search made on the appellant and the same violated the mandatory provisions of the Act. Further, the learned counsel for the appellant would submit that the recovered property was not reached the Court in time. The property which was said to have been recovered on 28.03.2010, reached before the Court only on 07.04.2010. The reason for the delay is not explained by the prosecution. The appellant was falsely implicated in this case. Further, the prosecution has not recovered the driving license of the appellant. A false case has been foisted against him. If at all the appellant was driver of the vehicle at that time of seizure of the contraband, the respondent police ought to have recovered the driving license of the driver of the lorry viz., the appellant. The said fact was not considered by the learned Special Judge. This is fatal to the case of the prosecution. The appellant is an innocent lorry driver. The learned Special Judge has failed to consider all these aspects and convicted the appellant mechanically. Benefit of doubt should be extended to the appellant. Hence, the learned counsel for the appellant prays to set aside the judgment passed by the learned Special Judge.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 received secret information from an informant and the said information was registered in the records. After registration, the police team proceeded to Vadapalani East Bus Stop, Chennai on 28.03.2010. While monitoring there, the informant identified the lorry bearing registration No.TN 59 AJ 7489. The police officers stopped the vehicle. At that time, the driver of the lorry tried to escape from there and the police team surrounded the lorry and made a search. They found 2030 Kg Ganja in the taker lorry and taken the samples from each bag. After completing the mandatory provisions of Section 50 N.D.P.S. Act, search was made on the appellant. However, no contraband was recovered on him. The respondent police have arrested the appellant and other accused and produced them before the XVII Metropolitan Magistrate, Saidapet for judicial custody. After investigation, the respondent police filed the charge sheet against the accused under Section 8(c) read with 20(b)(ii)(c), 25 and 29 of NDPS Act. The charge sheet revealed that both A1 and A2 had conspired and smuggled the Ganja. In order to prove the case of the prosecution, before the Special Judge, as many as 11 witnesses were examined and 28 documents were marked and 352 material objects were produced. P.W.7 is the defacto complainant, one who received information from the informant and he informed the same to the superior officer. As per the instructions given by the superior officer, the police team proceeded to Vadapalani Bus stop. After seizing the Ganja, independent witnesses were called to stand as a witness. The prosecution witnesses have established the case of the prosecution. The authorities submitted by the learned counsel for the appellant are not applicable to the present case, because the provisions of Section 50 of the NDPS Act has been duly complied with in this case. P.W.1, P.W.2, P.W.3 and P.W.4 have clearly deposed in their evidence that the appellant gave consent and signed in Ex.P2. The appellant have not denied the possession of the Ganja in the lorry. On reading of entire evidence of P.W.1 to P.W.4 and P.W.6, the prosecution has proved its case beyond reasonable doubt. A1 was driver of the lorry at that time and A2 is owner of the lorry and they have not rebutted the presumption. From the evidence of P.W.1, it is seen that there is no violation of the mandatory provisions.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

7. The case of the prosecution is that the respondent police got secret information about the possession of Ganja by the appellant in the lorry. While monitoring Vadapalani East Bus Stop, Chennai, on 28.03.2010, the informant identified the lorry

bearing Registration No.TN 59 AJ 7489. The police officers stopped the vehicle and surrounded the driver who tried to escape from that place. The lorry was searched and found 2030 Kilograms of Ganja from the Tanker Lorry, seized the lorry and contraband, took samples and sealed it with NIB seal. The accused were produced before the XVII Metropolitan Magistrate, Saidapet. After completing investigation, charge sheet was filed against the appellant and A2.

8. In order to prove the case of prosecution, the person who has received the secret information from the informant and recorded the information in the register maintained in the police station was examined as P.W.1. He has clearly stated that on receiving information, the same was reduced into writing in the G.D. And he passed it on to his superior officers and the police team was given instructions. They went to the spot and on seeing the vehicle, they surrounded the lorry and gave notice under Section 50 of NDPS Act and also recovered 43 bags of contraband and recorded the statement under Section 67. P.W.3 conducted the analysis and the chemical analysis report is Ex.P.10. P.W.2, P.W.4, P.W.6 were also required to prove the case of the prosecution.

9. The major contention taken by the learned counsel for the appellant is that the provisions of the NDPS Act has not been properly followed. However, on going through the records and on reading of the prosecution evidences, it is seen that an option was given to the appellant to conduct the search on him in the presence of the Gazetted Officer or the Magistrate. However, the appellants voluntarily agreed to conduct a search on him by the officer himself. But nothing was recovered on the body of the appellant during the personal search. Therefore, violation of 50 of the Act will not arise. It is seen from the judgment of the Court below that the trial Court has appreciated the entire oral and documentary evidence produced by the prosecution. However, the second accused has examined one witness as D.W.1. Nothing has been established about the innocence of the appellant in this Case. Likewise the appellant has not produced any document or material evidence to possess the contraband. A perusal of the records go to show that there is no violation of any of the mandatory provision of the NDPS. Act like Section 42,50,57 and 67 of the Act.

10. This Court has gone through the entire evidence produced before the trial Court on the prosecution side, this court is of the view that the prosecution evidences are cogent, natural and convincing. There is absolutely no material contradiction in any of the witnesses with regard to the seizure or arrest of the appellant which will go to the root of the case. There is no reason to disbelieve or discord the evidence of prosecution. Therefore, this court is not inclined to take a different view

in the judgment of the Special Court. Moreover, the charge levelled against the accused is smuggling of contraband. It is a crime against the society. If the offence committed at the spur of the moment or an offence committed without any intention, could be viewed with little leniency. However, cases of this nature, smuggling of contraband is evil threat to the society and it should be treated with iron hands. Therefore, this Court has no hesitation to sustain conviction and sentence imposed on the appellant.

11. In view of the above, the Criminal Appeal is dismissed. The judgment of conviction and sentence dated 22.04.2016 made in C.C.No.87 of 2010 on the file of the Special Court under NDPS Act, Chennai is hereby confirmed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
I-Additional Special Court under NDPS Act,
Chennai.
2. The Assistant Commissioner of Police,
NIB, CID, Chennai - 39.
Crime No.24 of 2010.
3. The Public Prosecutor,
High Court, Madras.

Cr1.A.No.108 of 2019

A.SK(30/01/2020)

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