

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.705 of 2018

Yuvarajan

... Petitioner

vs

State Represented by:

The Inspector of Police,
R-1 Mambalam Police Station,
T.Nagar, Chennai - 600 017.
(Crime.No.10/2017)

... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records in the order of conviction and sentence dated 02.03.2017 in CC.No.81 of 2017 passed by the learned XVII Metropolitan Magistrate, Chennai and set aside the same.

For Petitioner : Mr.P.Pugalenth

For Respondent : Mr.R.Surya Prakash
Government Advocate
(Crl. side)

O R D E R

This revision has been filed by the petitioner to call for the records order dated 02.03.2017 in CC.No.81 of 2017 passed by the learned XVII Metropolitan Magistrate, Chennai and set aside the same.

2. The respondent police filed a case against the revision petitioner under Section 24 (1) of the Cigarette and other Tobacco Products Act, 2003 (in short, the Act). After investigation, charge sheet was filed and the same was taken up on file in C.C.No.81 of 2017, on the file of the learned XVII Metropolitan Magistrate, Chennai. After trial, the learned Magistrate has found the accused guilty for the offence under Section 24(1) of the Act and convicted him and directed to pay a fine of Rs.200/-. As against the said order, the petitioner has filed this present criminal revision.

3. The learned counsel for the petitioner would submit that the accused accepted the guilt without understanding the ingredients of the law. The learned counsel further submitted that mere admission of the guilt would not be sufficient to convict the accused for the offences against him. The learned counsel also brought to the notice of this Court that the judgment dated 24.11.2017 in CrI.R.C.No.1114 of 2015 in respect of the co-accused who involved in the same crime. The learned counsel submitted that this Court has accepted the grounds raised by the petitioner therein and allowed the revision case. The conviction and sentence imposed on the petitioner therein also set aside. The learned counsel prayed similar indulgence would be shown to the petitioner herein also.

4. The learned Government Advocate (CrI.Side) vehemently opposed the contention of the petitioner and submitted that the charge against the petitioner is a crime against the society. Therefore, the learned Government Advocate submitted that no mercy shall be shown to the petitioner.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (CrI. Side) and perused the materials available on record.

6. Admittedly, the case was registered against the revision petitioner under Section 24 (1) of the Cigarette and other Tobacco Products Act, 2003. The above said section is extracted hereunder:

'24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years - (1) Any person who contravenes the provisions of Section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(2) All offences under this Section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).'

7. Section 6 of the Cigarette and other Tobacco Products Act, 2003 is extracted hereunder:

Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area. No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-

a. to any person who is under eighteen years of age, and

b. in an area within a radius of one hundred yards of any educational institution.

8. A perusal of the entire records reveal that there is no allegation in the FIR that the sale was to a person under 18 years of age or that the sale was within the radius of 100 yards of any educational institution. Therefore, the proceedings against the accused persons is neither permissible under Section 6 nor under Section 24(1) of the Act. If the accused had admitted the offence without understanding/knowing the ingredients of Section of law/law itself, then the admission, by itself is an invalid admission. In other words, the admission is not with reference to contents or ingredients of Section 6 or Section 24(1) of the Act. Therefore, the admission, even taken at face value do not show that the accused is guilty under Section 6 or Section 24(1) of the Act and the proceedings before the lower Court is devoid of merits. Therefore, conviction and sentence imposed on the revision petitioner has to be set aside, as rightly contended by the learned counsel for the revision petitioner.

9. Under these circumstances, since charge sheet itself does not contain the statement of the witness and charge sheet reveal that the revision petitioner/accused was in possession of the prohibited tobacco and not sold to the persons below the age of 18 years and also within the radiation of the school premises as mentioned in the Act. Therefore, the order passed by the learned Magistrate warrants interference.

10. With the reasons stated above, the Criminal Revision Case is allowed and the order passed by the learned Magistrate is set aside.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

1. The XVII Metropolitan Magistrate,
Chennai.

2. - do - Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

WEB COPY

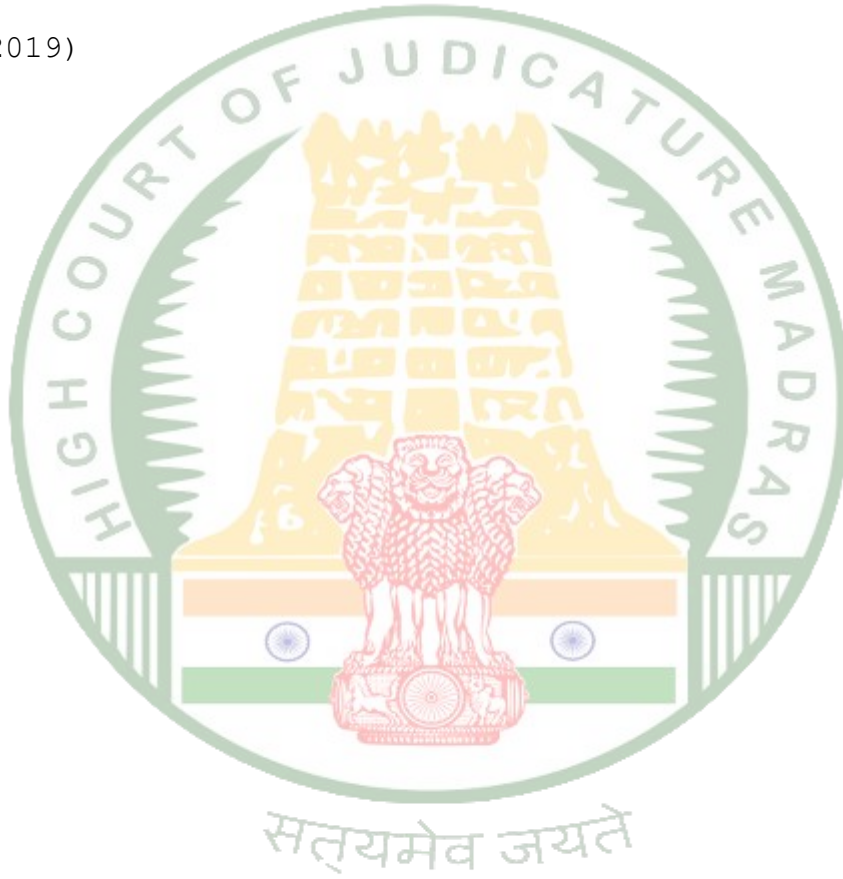
3. The Inspector of Police,
R-1 Mambalam Police Station,
T.Nagar, Chennai - 600 017.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Pugalenth, Advocate, S.R.No. 12263

Cr1.R.C.No.705 of 2018

PPA (CO)
GN(04/10/2019)



WEB COPY