

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.128 of 2014

Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai-90.

... Appellant/Complainant

/versus/

1.Kottai Kalimuthusamy @ Murugasamy

2.J.Seyed Rowther Abbas @ Abbas

3.Ram Singh @ Rakesh ... Respondents/Accused 1 to 3

Criminal Appeal filed under Section 377(2) of the Criminal Procedure Code against the judgment made in C.C.No.86 of 2005 dated 26.04.2013 on the sentence imposed under Section 21(b) of the NDPS Act against A1 to A3 and acquitting them under Section 8(c) r/w 28 and 29 of NDPS Act by the Principal Special Court for NDPS Act Cases, Chennai.

For Appellant : Mr.N.P.Kumar, Spl.PP (NCB)

For Respondents: No appearance

J U D G M E N T

This appeal is preferred by the complainant, aggrieved by the judgment of the Court below in C.C.No.86 of 2005 dated 26.04.2013, which has considered the quality of the contraband seized from the accused persons and awarded lesser punishment by applying the dictum laid by the Hon'ble Supreme Court in E.Michael Raj vs. Intelligence Officer(Narcotic Drug Bureau) reported in 2008 (2) M.L.J. Cr1.1144. The trial Court, while holding the accused persons guilty concluded that the contraband seized from the possession of the accused persons falls under in-between quantity, therefore, held them guilty for the offence under Section 8(c) r/w 21(b) instead of Section 8(c)r/w 21(c) of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act") and sentenced each of the accused to

undergo eight years Rigorous Imprisonment and to pay a fine of Rs.20,000/-each, in default to undergo further period of three months Rigorous Imprisonment. The trial Court, however has held them not guilty for the offence under Section 8(c) r/w 29 and 8 (c) r/w 28 of the NDPS Act.

2. The appeal is preferred on the ground that the Court below ought not to have deducted the weight of the polythene cover, which the Court has erroneously done without any basis.

3. The learned Special Public Prosecutor appearing for NCB would submit that the trial Court, while examining the defence witness has weighed 2 covers purchased from the market and has presumed the weight of the cover as 18 grams each and deducted as weight from the total weight of the contraband seized from the accused persons. Para 30 of the impugned judgment reads as under:

"30. The contraband seized and found in a pack is 286 grams, after reducing the weight of the polythene cover the weight of the contraband is 268 grams. $(286 - 18 = 268 \text{ grams})$. The contraband that was found in another packet is 289 grams after reducing the weight of the polythene cover is 271 grams $(289 - 18 = 271 \text{ grams})$. Thus, the total weight of the contraband seized is 539 grams $(286 + 271 = 539 \text{ grams})$."

4. The learned Special Public Prosecutor appearing for NCB further submitted that the erroneous manner in which the trial Court has arrived at the weight of the bulk as well as ascertaining the purity, based on the chemical analysis test had converted the gravity of the crime from the possession of the commercial quantity to in-between quantity leading to imposing lesser punishment. Further, the learned Special Public Prosecutor would submit that while the trial Court having found the accused persons guilty of offence under NDPS Act and the accused have pleaded the guilty ought not to have ordered to return M.O.4 to M.O.7 and M.O.12 to the accused persons. Pointing out that the preamble portion of the judgment, the learned Judge has ordered to entrust M.O.1 to M.O.3 and M.O.8 to M.O.11 to the destruction Committee and rest of the material objects to be confiscated to the State. Contra to the preamble, in the operative portion of the judgment, the trial Court by oversight has ordered M.O. 4 to M.O.7 and M.O.12 be returned to the persons concern.

5. Having gone through the judgment and evidence let in by the prosecution, this Court is of the view that except pointing

out the error in the judgment, nothing else warrants in this appeal due to efflux of time and change in the law. At the time of rendering the judgment E.Michael Raj v. The Intelligence Officer, (Narcotic Drug Bureau) reported in 2008 2 M.LJ CrI. 1144 was the law pronounced by the Hon'ble Supreme Court and therefore, the purity test of the contraband seized had prevalence over the bulk. Even if the weight (18 grams) of the polythene cover taken into consideration on presumption not deducted from the total weight of the contraband seized, after applying the purity test, it would have been only marginally more than the commercial quantity. In view of the uncertainty in the total weight due to inclusion of polythene cover and the purity, the benefit of doubt can be extended to the accused and no interference in the finding of the Court below requires. As far the error in the order of returning the material objects, the order of trial Court to return M.O.4 to M.O.7 and M.O.12 to the person concerned is set aside. Since the prosecution has proved those material objects are corpus delicti, they are liable to be confiscated to the State accordingly. The same shall be confiscated to the State.

6. With the above observation and modification regarding confiscation of the property viz., M.O.4 to M.O.7 and M.O.12 to the State, the judgment of the Court below stands confirmed.

7. Accordingly, this Criminal Appeal is disposed of.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Special Judge,
Special Court Under E.C. And NDPS Act,
Chennai-600 104.

2.The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai-90.

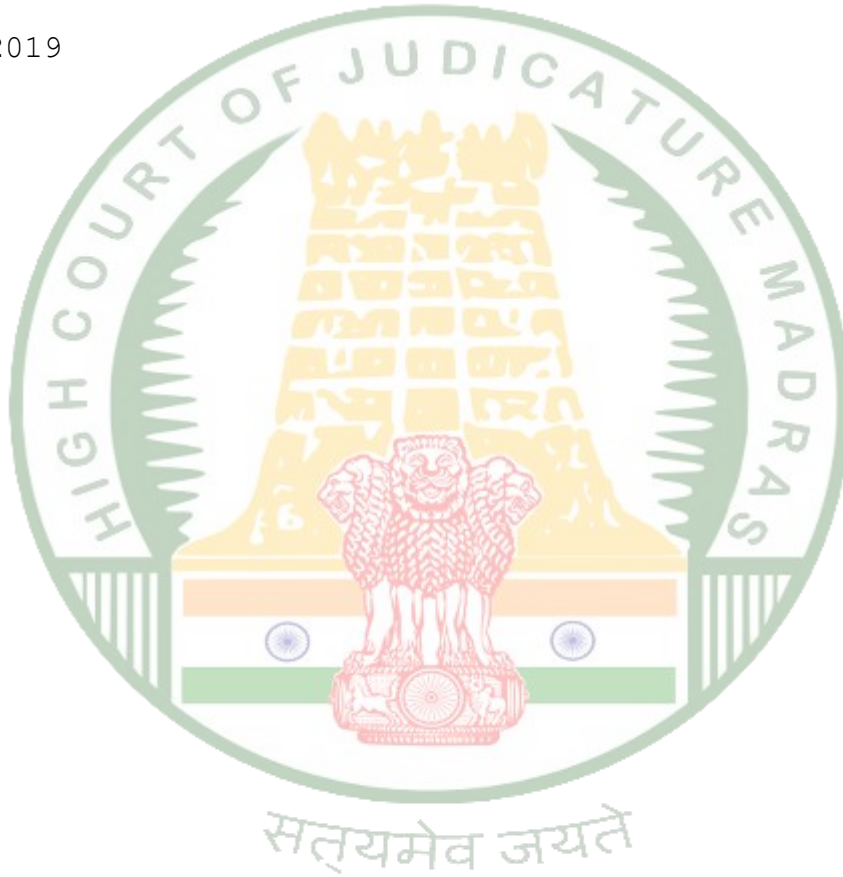
3.The Special Public Prosecutor for NCB Cases,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

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