

Bail Slip

The Appellant/Accused Viz., Paul Pandi was directed to be released on bail as per order of this court dated 04/03/2014 in CrI.Mp.No.1/2014 in CrI.A.11/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.11 of 2014

Paul Pandi

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
NIB CID, Chennai.
(Crime No.85/2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the conviction and sentence rendered by the Principal Special Judge under NDPS Act, Chennai dated 27.12.2013 in C.C.No.3/2013 in Crime No.85/2012 for offence u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act.

For Appellant : Mr.J.Asokan
Mr.R.Balakrishnan (Legal Aid Counsel)

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (CrI.Side)

J U D G M E N T

This appeal has been filed to set aside the judgment dated 27.12.2013 made in C.C.No.3/2013 on the file of the Court of Principal Special Judge under NDPS Act, Chennai.

2. The case of the prosecution is that on 01.08.2012 at 17.30 hours the respondent police received an information over phone that one Paul Pandi is selling 3 kilograms Ganja at Basin Briidge Railway Station back side near cycle stand between 4.45 & 7.30 p.m, without any valid permit or license. PW-1 recorded the information vide Ex.P1 and sent the same to the Inspector of Police [PW-3] and he permitted him to proceed further in the case. After getting permission from the Superior, PW-1 along with Police party, went to the said place and maintained surveillance. On being identified by the informant, they conducted raid at the spot and surrounded the accused and also seized 3 Kilograms of Ganja from the accused. When they secured the accused, there was no independent witness, since the arrest was made by the respondent-police in a public place. After completing formalities and also recovered the contraband from the accused, PW-1 prepared seizure mahazar and other documents and took two samples [each contains 50 grams] from the bulk property and also prepared the arrest memo [Ex.P4] at 7.30.p.m. Thereafter, he was brought to the police station, where, PW-1 submitted a report under Section 57 of the NDPS Act [Ex.P6] to the Inspector of Police[PW-3]. A case in Crime No.85 of 2012 was registered for the offence under Section 8(c) read with 20(b) (ii) B of NDPS Act. PW-3 sent the accused to the Principal Special Court for NDPS Act Cases, Chennai along with FIR, remand report and samples of contraband. After completion of investigation, the Inspector of Police [PW-3] laid a charge sheet in C.C.No.3 of 2013 before the Special Court for NDPS Act cases, Chennai against the accused.

3. In order to prove the case, the prosecution examined as many as 4 witnesses, marked 10 exhibits and 3 material objects. After completing the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses were put before the accused, he denied as false. On the side of the defence no evidence was produced. The learned Principal Special Judge, after completing the trial, came to the conclusion that the appellant/accused has committed the offence under Section 8 (c) read with 20(b)(ii) B of NDPS Act, convicted and sentenced him to undergo 3 years Rigorous Imprisonment and fine of Rs.10,000/-, in default, to undergo 3 months Rigorous Imprisonment. There against, the accused has preferred the present appeal before this Court.

4. When the matter came up for hearing on 11.04.2019, there was no representation for the appellant/accused. Hence, the Court appointed a Legal Aid Counsel. Today, the party also appeared before this Court. In order to avoid further delay, the Court has retained the Legal Aid Counsel.

5. Heard Mr.J.Asokan, learned counsel appearing for the appellant, Mr.R.Balakrishnan, Legal Aid Counsel for the appellant and Mr.T.Shanmuga Rajeswaran, learned Government Advocate (Crl.Side) appearing for the respondent. Perused the material available on record.

6. The learned counsel appearing for the appellant would submit that the prosecution has stated that at about 3.00 p.m the respondent police received the information, whereas, they proceeded to the spot only at 5.30 p.m. But the evidence does not show that the appellant was trying to escape from the police. Moreover, the appellant was not in possession of Ganja and a false case has been foisted against him. The prosecution has not secured any independent witness. They prepared the mahazar, remand report, which contain Crime No.85 of 2012, which creates doubt. The crime number would be allotted after filing a report under Section 57 of NDPS Act. Normally, the Station House Officer would register the case and place the matter before the Investigation Officer, whereas, in this case all the documents contain the crime number, which also creates doubt. All the documents were created at the station itself, not at the spot. They have not followed the mandatory procedures contemplated under the NDPS Act either at the time of arrest or at the time of remand. The properties have not been sent to the Court along with the FIR and accused. The seized contraband was produced before the Court after a delay of 14 days, which also creates suspicion. Though the prosecution collected two pockets of samples, one sample was sent to the Forensic Lab and they have not stated anything about the other sample, which also creates doubt. When there is any doubt, the benefit of doubt has to be extended to the accused. In this case, the prosecution has not proved its case beyond reasonable doubts and they have foisted a false case against the appellant/accused, which warrants interference. The learned counsel relied on the decisions of this Court, which are not applicable to the present case in hand.

7. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that though the respondent police received the information at 3.30 p.m, he intimated the same to his superior and on the instruction of the Superior, they proceeded to the spot by 5.30.p.m. After identifying the accused by the informant, they secured the accused and seized the contraband from the accused weighing 3 Kilograms Ganja. They observed all the mandatory provisions as contemplated under the NDPS Act vide Exs.P2 to P7. There is no defect in the investigation. Though the learned counsel for the appellant stated that the crime number mentioned in the arrest memo, the crime number has been written in the arrest memo, while intimating the arrest to the relative and it was happened after registration of the case. The PW-1 explained the same how the

crime number found in the arrest memo. Therefore, mere mentioning the crime number in the arrest memo is not vital to the case of the prosecution. It has not been challenged by the defence at that time of trial. The prosecution has meticulously followed the procedures under the NDPS Act. On conjoint reading of the evidence would reveal that the prosecution has proved its case beyond reasonable doubts, which does not warrant interference.

8. The case of the prosecution is that on 01.08.2012 at Basin Bridge Railway Station back side near cycle stand between 4.45 & 7.30 p.m the accused was found in possession of 3 Kilograms of Ganja, without any valid permit or license. PW-1 has deposed that he conducted search and seized 3 Kilograms of Ganja from the accused and he take two samples of Ganja each containing 50 grams and the remaining 2.900 kilograms were put in a sealed cover. He prepared mahazar and got signature from the accused and also recorded the confession statement of the accused at 6.30.p.m and arrested him by 7.00 p.m and later he informed the same to the relatives of the accused.

9. On a reading of the evidence of PWs-1, 2, 3 and also Exs.P1 to P7, this Court is of the view that the prosecution has proved its case beyond reasonable doubts. There is no quarrel with the settled proposition of law laid down by the Hon'ble Supreme Court and this Court on various decisions, whereas, in this case the prosecution has established that all the procedures contemplated under NDPS Act have been followed in the manner known to law and all the documents were filed before registering the case. After completing the procedures in the place of arrest, the respondent police prepared report under Section 57 of NDPS Act and submitted before the Superior Officer and he registered the case. After completing investigation filed charge sheet. Evidence of PW-4 and Ex.P10 proved that the seized contraband is Ganja. Therefore, this Court finds from oral and documentary evidence that the appellant has committed the offence and the prosecution proved the guilt of the appellant.

10. In the above circumstances, this Court finds that the prosecution has proved its case beyond reasonable doubts. The Special Court has dealt with the case in detail and rightly convicted the accused. This Court does not find any perversity in the judgment of the trial Court. However, considering the ailment suffered by the appellant/accused, this Court is inclined to reduce the sentence imposed on the appellant/accused.

11. Accordingly, this Criminal Appeal stands partly allowed. The sentence imposed on the appellant/accused is reduced to 2

years Rigorous Imprisonment. The other conditions imposed by the trial Court remains unaltered. The counsel for the appellant/accused on record, who was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Special Judge for NDPS Act,
Chennai.
- 2.The Inspector of Police,
NIB CID, Chennai.
- 3.The Public Prosecutor,
High Court, Madras -104.
- 4.The Secretary,
Tamil Nadu State Legal Services Authorities,
Chennai.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.

+1cc to Mr.J.Asokan, Advocate sr.49552

+1cc to Mr.R.Balakrishnan, Advocate sr.49568

सत्यमेव जयते

Criminal Appeal No.11 of 2014

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