

Bail Slip

The Appellant/Petitioner accused namely Mr.N.Balakrishnan was directed to be released on bail as per the order of this court dated 13.02.2014 made in CrI.MP.1/2014 in CrI.RC.NO.182/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.182 of 2014

N.Balakrishnan

...Petitioner/Appellant/Accused

Vs.

State rep. By
The Inspector of Police,
M3 Puzhal Police Station.

....Respondent/Respondent/Complainant

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. seeking to set aside the judgment of conviction and sentence passed by the learned Judicial Magistrate, Thiruvattur, in C.C.No.486 of 2009 dated 19.11.2012 as confirmed by the learned IV Additional District and Sessions Judge, Ponneri, in C.A.No.100 of 2012 dated 02.12.2013.

For Petitioner : Mr.P.Ezhil Nilavan

For Respondent : Mr.T.Shanmugarajeswaran,
Govt. Advocate (CrI.Side)

ORDER

This criminal revision case has been filed against the concurrent judgment of conviction made by both the Courts below.

2 The respondent police registered a case against the revision petitioner for the offence under Section 8(C) r/w 20(b) (2)(a) of Narcotic Drugs and Psychotropic Substances Act, 1985, (for brevity "the NDPS Act") and after investigation laid a charge sheet before the learned Judicial Magistrate, Thiruvotriyur. The learned Judicial Magistrate took cognizance of the case in C.C.No.486 of 2009 and after trial, by judgment dated 19.11.2012, convicted the petitioner/accused and sentenced him to undergo rigorous imprisonment for a period of two months

with fine of Rs.3,000/-, in default, to undergo simple imprisonment for a further period of one month. Challenging the said judgment of conviction, the accused has filed an appeal, which was taken on file in C.A.No.100 of 2012 by the learned IV Additional District and Sessions Judge, Ponneri. The learned Sessions Judge, after hearing both the counsel, by judgment dated 02.12.2013 dismissed the appeal and confirmed the judgment of conviction recorded by the learned trial Judge. Aggrieved against the concurrent judgment of conviction, the petitioner is before this Court with the present criminal revision.

3 The criminal revision case is pending for more than five years without any progress and the learned counsel, even after giving sufficient opportunities, did not co-operate with the Court to dispose of the revision on merit and is not ready to argue the matter and hence this Court has gone through the papers and dispose of the same on merit.

4 Case of the prosecution is that the petitioner was working as Grade I Police Constable at Puzhal Prison II. On 20.06.2009 at about 5.45 p.m. when he was reporting duty, was checked by P.W.3 and found the petitioner was in possession of 49 packets of Ganga weighing 75 grams, 4 packets of Pattanam Podi, which were hidden in his shoes and 3 cigarettes, one cigarette lighter in his pocket, which were totally prohibited to bring the same inside the prison. P.W.3 complained the same to Superintendent of Jail and on advice, P.W.1 lodged a complaint before the respondent police and case was registered, which was ended in conviction.

5 According to the petitioner as stated in his grounds of revision, there was delay in lodging complaint nearly four hours. The distance between the occurrence place and the police station is only half a kilometre, the occurrence alleged to have taken place at 5.45 p.m. and complaint was lodged at 10.00 p.m. and there is nearly 20 hours delay in sending the FIR to the Magistrate. Prosecution has failed to explain the above delay in a proper way. In the FIR, it was stated that P.W.1 came and lodged complaint before the Investigating Officer/P.W.6 and he, in his own handwriting, registered the FIR, whereas, P.W.6 in his cross examination stated that he did not know, who gave the complaint. The inspector of police handed over a letter to him and based on the same he registered FIR, per contra, P.W.1 in his cross examination has stated that he gave a typed complaint Ex.P1 to P.W.6 and therefore, the very FIR itself lost its credibility and is doubtful. Prosecution witnesses 2, 3 & 4 are colleagues of the petitioner and prosecution claims all the above witnesses given written statement to the Jail

Superintendent after witnessing the alleged occurrence and even though those statements were forwarded to P.W.6, were not marked as exhibits before the trial Court, which was fatal to the case of the prosecution. P.W.6 has stated that he obtained statements from P.W.1, but, P.W.1 has stated that Inspector of Police obtained statement under Section 161 from him and further P.W.6 in his cross examination has stated that immediately after receiving information rushed to Puzhal Jail to obtain statements from P.Ws.1 to 4, but, P.W.2 in his cross examination has stated that he was not at all examined by the police officials in connection with this incident and P.W.3 stated that he was examined by the police after two days from the date of occurrence and P.W.4 stated that on 21.06.2009 at about 10.00 a.m. the Head Constable attached to Puzhal Police Station called P.Ws.2, 3 & 4 for enquiry and on 20.06.2009, the police never examined him. The above contradictions between the prosecution witnesses creates doubts with regard to the statement recorded under Section 161 of Cr.P.C. from the witnesses. Prosecution has failed to explain the seizure of samples from the petitioner and there was delay in producing the same before the Court, which was not explained by the prosecution. Prosecution has failed to examine the shop keeper, in which, the contraband was weighed.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that petitioner, who was working as Grade I Police Constable at Puzhal Prison II, on 20.06.2009 at about 5.45 p.m. when he was reporting duty, he was checked by P.W.3 and found the he was in possession of 49 packets of Ganga weighing 75 grams, 4 packets of Pattanam Podi, which were hidden in his shoes and 3 cigarettes, one cigarette lighter in his pocket, which were totally prohibited to bring the same inside the prison. P.W.3 complained the same to his superior the Superintendent of Jail and he advised P.W.1 to lodge a complaint. Prosecution has proved its case beyond reasonable doubt and both the Courts below had rightly convicted the petitioner, which does not call for any interference.

7 Heard the learned Government Advocate (Crl.Side) and perused the materials available on record.

8 It is seen that the petitioner was charged for the offence punishable under Sections 8(C) r/w 20(b)(2)(a) of the NDPS Act for carrying the prohibited items as stated above in the jail premises. The defence taken by the petitioner is that there was previous enmity between P.W.1 and the petitioner and in order to wreck vengeance, false case has been foisted against the petitioner. The petitioner has failed to explain the enmity and prove the same by examining any witnesses. Prosecution has

proved possession of prohibited articles inside the jail prison by the petitioner through evidence of P.Ws.1 to 5 and Ex. P2. The petitioner/accused did not deny the occurrence and he is only stated that due to previous enmity, false case has been foisted, but, he failed to establish the defence taken by him. It is admitted fact that the petitioner worked in the Prison and it is also admitted fact that he reported duty on the date of occurrence i.e. on 20.06.2009 at 5.45 p.m. The trial Court had rightly appreciated the evidence of prosecution witnesses and convicted the petitioner. The lower appellate Court, being a final Court of fact finding, had re-appreciated entire evidence independently and confirmed the conviction recorded by the trial Court. This Court, while exercising revisional jurisdiction, cannot re-visit the entire evidence and substitute its own views on the finding of the lower appellate Court, unless there exists perversity. This Court does not find any perversity in the judgment of conviction made by both the Courts below.

9 In the result, the criminal revision case stands dismissed as devoid of merit and substance. Trial Court is directed to secure the petitioner/accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Judicial Magistrate, Tiruvallur.
- 2.The Judicial Magistrate, Thiruvattur.
- 3.The IV Additional District and Sessions Judge, Ponneri.
- 4.The Public Prosecutor, High Court of Madras.
- 5.The Inspector of Police, M3 Puzhal Police Station Chennai.

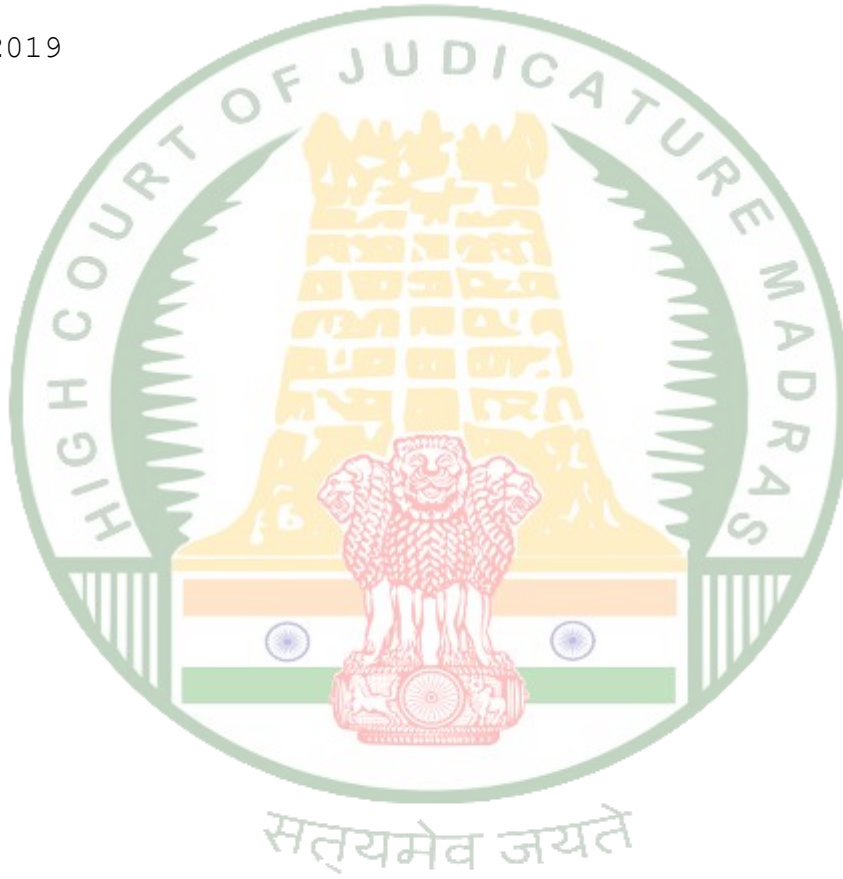
Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.P.Ezhil Nilavan, Advocate sr.73530

Cr1.R.C.No.182 of 2014

mr(co)
nr 05/11/2019



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