

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.6950 of 2017

M.Suresh

...Petitioner

Vs.

The Inspector of Police
NIB,
Coimbatore.

...Respondent

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in C.C No.64 of 2016 on the file of the Special Judge, NDPS Court, Coimbatore and quash the same as against the petitioner herein.

For Petitioners : Mr.N.A.Manimaran

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

This petition has been filed seeking to quash the proceedings in C.C No.64 of 2016, pending on the file of the Special Court, NDPS Act, Coimbatore.

2. The case of the prosecution is that based on the secret information, the respondent police intercepted a two-wheeler and arrested A1 and seized 25 kgs of Ganja from him. Based on his confession, the respondent police seized 300 kgs of Ganja which was in possession of A2 to A4 and these accused persons were arrested and remanded to judicial custody. Based on the confession of A1, A5 to A8 have been added as an accused.

3. On completion of the investigation, a final report came to be filed as against the eight accused persons for an offence under Section 8 (c) r/w 20 (b) (ii) (c) and Section 25, 29 and 27(A) of NDPS Act. The petitioner was added as A7 in the final

report.

4. The final report was taken on file in C.C No.129 of 2010. Thereafter, the case was split up and the case insofar as the petitioner is concerned was numbered as C.C No.64 of 2016.

5. in the mean time, the trial Court proceeded to decide the case in C.C No.129 of 2010 as against A1, A2, A3, A4, A5 and A6. All these accused persons were acquitted by a judgment dated 01.02.2016. Thereafter, the trial was conducted as against A8 in C.C No.71 of 2015. This case also ended in acquittal by a judgment dated 08.12.2016.

6. The learned counsel for the petitioner submitted that there are absolutely no materials against the petitioner (A7) except for the confession statement of A1. The learned counsel further submitted that the judgment of acquittal passed in favour of the other accused persons will also enure to the benefit of the petitioner and therefore, the proceedings against the petitioner may be quashed by this Court.

7. The learned Government Advocate appearing on behalf of the respondent police submitted that the petitioner was absconding for a very long time and based on the non-bailable warrant issued by the Court below, he was secured and remanded to judicial custody on 18.02.2019. Subsequently, the petitioner was granted bail by this Court in Crl.O.P No.7283 of 2019, by order dated 26.03.2019. The learned counsel therefore submitted that the petitioner has to face the trial before the Court below.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is seen even from the judgment passed in C.C No.71 of 2015 that the Court below has categorically stated that there are absolutely no materials available as against A7 and A8. This finding is found at paragraph 18 of the judgment. This was the basis on which A8 was acquitted by the Court below. The only material that is found against the petitioner is the confession of the co-accused (A1).

10. It is now a well settled principle that the confession recorded under Section 67 of the NDPS Act is a substantive evidence only against the maker of the statement and in respect of co-accused, it is not a substantive evidence and utmost it can only be considered as a relevant evidence. A conviction can never be made merely based on such a statement. Useful reference can be made to the judgment of this Court in Kumar @ Ranjithkumar vs.State, rep. By Inspector of Police, D-1 Ramanathapuram Police Station, Coimbatore District reported in

2019 (2) Madras Weekly Notes, Criminal 242.

11. One more factor that is in favour of the petitioner is that all the other co-accused have already been acquitted in this case. There is no independent material that is available against the petitioner except the confession of A1. Therefore, the acquittal of the other co-accused, will also enure to the benefit of the petitioner and it is not necessary that the petitioner has to undergo the ordeal of a trial in order to prove his innocence. Useful reference can be made to the judgment of this Court in *Thamilendi vs. State*, by Inspector of Police, Orathanadu Police Station, Thanjavur Police Station reported in 2008 2 CTC page 153 and in *Chinnappa @ Mahendran vs. State*, rep. By Inspector of Police, Orathanadu Police Station, reported 2015 1 Madras Weekly Notes, Criminal 259.

12. In view of the above, this Court has no hesitation to quash the proceedings pending against the petitioner in C.C No.64 of 2019, on the file of the Sub Court for NDPS Cases, Coimbatore and accordingly, the same is quashed.

13. This Criminal Original Petition shall stands allowed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge, NDPS Court, Coimbatore

2.The Inspector of Police
NIB,
Coimbatore.

3.The Public Prosecutor
High Court of Madras.

+1cc to Mr.N.A.Manimaran Advocate, S.R.No.67317

AD(CO)
CB(19/09/2019)

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