

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.836 of 2018
and
Crl.M.P.No.17434 of 2018

Nagesh @ Aravetti Nagehwara

...Appellant/Accused

Vs.

State by:

The Inspector of Police,
Hosur Police Station,
Krishnagiri District.
(Crime No.365 of 2016)

...Respondent/Complainant

PRAYER: Criminal appeal is filed under Sections 397 and 401 of the Criminal Procedure Code, against the judgment of the Learned Special Judge, E.C.Act Cases at Salem dated 03.11.2018 made in C.C.No.3 of 2017 convicting the appellant for the offence under section 8(c) r/w.20 (b)(ii)(c) of NDPS Act and sentenced him to undergo rigorous imprisonment for a period of 10 years and fine of Rs.1 lakh and in default to undergo rigorous imprisonment for one year. The substantial sentence of imprisonment imposed on the appellant shall run concurrently and the period already undergone by the appellant shall be set off u/s.428 Cr.P.C. The conviction and sentence imposed by the Learned Trial Judge is liable to be set aside.

For Appellant : M/s.S.Jeyakumar

For Respondent : Mr.Mr.R.Ravichandran

Government Advocate (Criminal Side)

ORDER

This Criminal appeal is directed against the conviction and sentence imposed upon the appellant/accused by the trial Court for the offence under Section 8(c) r/w 20(b) (ii) (c) of NDPS Act 1985.

2 The learned Special Judge, E.C.Act, Salem, considering the evidences placed before the court such as depositions PW-1 Kannan, the Sub-Inspector of Police and PW-5 Rajasomasundaram, the Inspector of Police, who has gone to the spot and conducted the seizure of the contraband and arrested the accused and investigated the case, the trial Court concluded that the prosecution has proved the illicit possession of Ganja by the accused and recovery of the same from his possession. The trial

Court has held that the accused found guilty of the charges and convicted him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo further period of 1 year simple imprisonment.

3 In order to prove the case, the prosecution has examined 6 witnesses and 10 exhibits were marked. Besides 6 material objects. To prove the innocence DW-1 was examined, 1 exhibit was marked on the side of the accused.

4 Aggrieved by the said Judgment of conviction, the appellant has prepared the present appeal before this Court.

5 The learned Counsel appearing for the appellant would contend that the appellant is no way connected with the offence and he had been falsely implicated in this case. The appellant was arrested on 05.06.2016 at about 03.00p.m., at Hosur Police Station limit for the alleged offence said to have been committed by him under Section 8(c) r/w20(b)(ii)(c) of NDPS Act and from the date of arrest he is languishing in Central Prison, Salem. The learned trial Judge, failed to consider the fact that mandatory procedures contemplated under Section 42 to 57 under NDPS Act was not complied with by the Investigating Officer. The definition of ganja as defined under Section 7(3)(b) of NDPS Act has not been properly appreciated by the trial Judge. He further submitted that the appellant was a poor driver who was handicapped and also the smuggler of ganja was a passenger who ran away from the spot. The learned trial Judge failed to consider the contradictions in the evidence of prosecution witness. The trial Court failed to appreciate the evidence of Investigating Officer for non-compliance of the mandatory provisions under NDPS Act by P.W.1 regarding arrest seizure and recovery. No independent witness was examined to prove the case of the prosecution and the appellant was falsely implicated in this case. Due to the poor financial condition of the appellant he did not pay the fine amount as imposed by the trial Court as on date of filing of this appeal, which warrants interference of this Court.

6 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that on 05.06.2012 the respondent police received secret information that the accused is in possession of Ganja near Hosur, Thali Railway Gate. The said information was received at about 14.00p.m., the respondent police has proceeded to the spot with his team and arrested the accused who was carrying a bag in his hand contain 26.00 kgs of Ganja. The prosecution has proved its case beyond reasonable doubt and there is no perversity in appreciation of the evidence, which does not warrants any interference by this Court.

7 The case of the prosecution is that on 05.06.2016, the Sub Inspector of Police, working in Hosur Police Station received a secret information that the accused is in possession of Ganja near Hosur, Thali Railway gate. The said information was received at about 14.00 pm. After reducing the said information in writing, PW-1 Kannan, the Sub-Inspector of Police, forwarded the information to his immediate superior PW-5 Raja Somasundaram/Inspector of Police. After obtaining his permission, he proceeded to the spot with his team consisting of Sugumar/Constable, Anbarasu/constable. When they reached the spot, the informant identified the accused who was carrying a bag in his hand. The bag carried by the accused found to have contain 26.00 kgs of Ganja. The detailed report about Seizure and arrest has been forwarded to the Inspector of police, being the immediate superior, as per Section 57 of NDPS Act. The accused was remanded to judicial custody. The property was returned to police who present before the Special court. The sample was sent for chemical analysis, which was subjected to analysis at the Tamil Nadu State Forensic Science Laboratory. PW-4, Jeganathan, Scientific Officer has given a report that the seized contraband contains cannabinoid which is known as Ganja. Based on the materials collected during the course of investigation, the prosecution laid Final Report against the accused for the offence punishable under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985.

8 Moreover, from Ex.P.6/Arrest Memo and on perusing the evidence of PW-1, PW-2, PW-3, PW-5 and PW-6, the recovery of 26.00kgs of Ganja from the possession of the accused is corroborated and established. Moreover, the witnesses examined in this case are all official witnesses and no other independent witnesses have been examined. It is true that in these type of cases, many times individuals will not come forward to be stood as witnesses. The raiding team has sought the assistance of the individuals who were present in the spot, but they declined to stand as witnesses. This fact finds place in the First Information Report filed under Section 57 of NDPS Act and deposition of P.W.1. Therefore, the non-examination of any independent witnesses will not vitiate the case of the prosecution.

9 This Court being appellate Court, has to appreciate the evidence independently and arrive at independent conclusion that as to whether the prosecution has proved the guilt of the accused and proved its case beyond all reasonable doubt. On a reading of the entire materials, it is seen that the appellant has committed the offence under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985 and P.W.1 to P.W.3 have also proved the same. Therefore, under these circumstances, this Court finds that there is no reason to interfere with the judgment of the Special

Court and there is no merit in the appeal and hence, the appeal is liable to be dismissed.

10 In the result, the Criminal Appeal is dismissed. Consequently connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge,
E.C.Act Cases,
Salem
2. The Inspector of Police,
Housur Police Station,
Krishnagiri District.
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court of Madras.

Copy To: The Section Officer, Criminal Section,
High Court of Madras

+1 cc to M/s.S.Jeyakumar, Advocate Sr.No.37147

AKM/12.09.19/4P-7C/

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