

BAIL SLIP

Ramar, S/o.Ammavasai Thevar, aged about 27 years was released on bail vide order of this court made in CRL.MP(MD)No.1515 OF 2019 in CRL.A.(MD)No.463 of 2008

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.VELMURUGANCrl.A.(MD)No.463 of 2008

Ramar ... Appellant/accused

- Vs-

The State Represented by
The Inspector of Police
NIB-CID Police
Theni District
Crime No.74 of 2002

...Respondent/complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment and conviction passed by the Special District and Sessions Judge (for NDPS Cases) Madurai in C.C.No.443 of 2002 dated 22.10.2008 convicting him for the alleged offence under Section 8(C)r/w.20(b)(ii)(B) of NDPS Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo one month simple imprisonment.

For Appellant : Mr.R.Jegadeeswaran
Legal Aid Counsel

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

This Criminal appeal has been filed to set aside the order dated 22.10.2008 passed in C.C.No.443 of 2002 by the learned Special District and Sessions Judge (for NDPS Cases) Madurai.

2. The case of the prosecution is that when PW4 was in duty, one informant came to the police station and informed that five persons were found in possession of Ganja and if they come with him, he will show the persons. Further he entered the same in writing and thereafter PW4 informed the same to the superior officer and after obtaining permission they went to the place of occurrence identified by the informant and they intercepted the suspected persons and after enquiry the appellant voluntarily



handed over Ganja weighing about 50 kgs and he admitted himself that he is in possession of the Ganja. Thereafter he proceeded further as per the provisions contemplated under NDPS Act and duly complied with the statutory provisions under the NDPS Act and recovered Ganja and prepared mahazhar and also took samples in accordance with law and arrested the accused and prepared statement and report under Section 57 of the N.D.P.S Act and after investigation laid charge sheet against the accused for offence under Section 8(c)r/w.20(b) (ii) (B) of the NDPS Act.

3. After framing necessary charges in order to prove the case of the prosecution, on the side of the prosecution as many as 5 witnesses were examined as PW.1 to PW.5 and 11 documents were marked as Ex.P.1 to Ex.P.11 and 3 material objects were exhibited.

4. After completion of the prosecution evidence, when the incriminating materials culled out from the prosecution witnesses was put before the appellant / accused, the appellant denied the same as false. On the side of the defence no oral and documentary evidence were adduced.

5. After completing the trial and hearing the arguments advanced by the learned counsel on either side, the learned Judge convicted the appellant and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo one month simple imprisonment. Aggrieved by the same, the convict has preferred the present appeal.

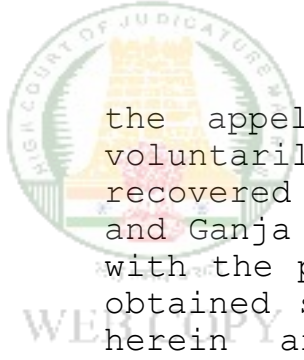
6. The learned counsel for the appellant would submit that in this case there are totally five accused and except the appellant other four accused were left out and charge sheet has been filed only against the present appellant herein. He would further submit that the prosecution has not given any reason as to why other accused persons were left out and charge sheet has been filed against the present appellant alone. He further submitted that though the prosecution has stated that the appellant has taken the Ganja from Kerala and the prosecution has failed to investigate as to whether he purchased the Ganja from Kerala or any other place and the origin of the Ganja. He further submitted that at the time of taking sample the respondent police has taken 50 gm of Ganja only for sending sample, but according to PW.1 there was only 35 grams of Ganja were available and there is no seal of the police, which creates doubt. The prosecution has not investigated the case properly and not examined the informant in this case, which is also fatal to the case of the prosecution. He would further submit that during the relevant period of occurrence, the appellant is only about 21 years. The mandatory provisions of NDPS Act has not been duly complied with. The confession statement recorded by the officials is not admissible in evidence. The trial Court has failed to consider all the factual and legal aspects and wrongly convicted the accused, therefore the appellant/accused is entitled for acquittal, which warrants interference of this Court.



7. The learned Additional Public Prosecutor would submit that in this case PW 4 received information from the informant who came to the police station and informed him and the same was reduced into writing in the register maintained in the police station and after obtaining permission from the superior officer PW5 he proceeded along with two other head constables and informant to the place where the informant indicated and when they reached the spot five persons were found in the place and when they intercepted the suspected persons and the appellant herein himself admitted that he was in possession of Ganja and thereafter after complying with the statutory provision of Section 50 of the NDPS Act and also served notice to the appellant and thereafter, when they called two independent witnesses since they had urgent work they had expressed their inability to stand as independent witnesses. Thereafter the constables who have accompanied with PW 4 stood as witnesses and in the presence of the police constables after complying with the procedural formalities under NDPS Act recovered Ganja and also prepared Mahazhar and tested the contraband through Kit and subsequently he was arrested and prepared report under Section 57 of the NDPS Act before the Investigating Officer. Thereafter the Investigating Officer registered a case and sent the appellant along with Ganja to the concerned Magistrate and requested to send the sample of Ganja to forensic lab for chemical testing and PW1 after examining the sample reported that the said sample is only Ganja. Therefore after receiving report laid charge sheet against the appellant for the offence under Section 8(c)r/w.20(b)(ii)(B) of the NDPS Act. The prosecution has proved its case beyond reasonable doubt and hence there is no reason to interfere with the same.

8. Heard the learned counsel on either side and perused the records carefully.

9. While PW4 was working as a Head constable in N.I.B, C.I.D, in Theni on 20.03.2002 at about 09.00 a.m., one informant came in person and gave information and he also reduced the information in writing then he informed the same before the Inspector of Police PW5 over phone and after getting instructions from him he along with HC,150 Alagarsamy, HC559 Valavanthan and HC 2141 Pandian and other police went to the place of occurrence by the police vehicle bearing No. TSC 4424 at about 9.00 clock and they reached the place of occurrence by 10.30 a.m., towards the direction which was indicated by the informant. Five persons were found in the suspected place with plastic bags and the police surrounded them and called the independent witness to witness the same, but they refused to come. Therefore in the presence of police party they intercepted the appellant and they were informed the right to be searched either in the presence of Magistrate or Gazetted Officer and for which they told no need to bring the accused before them instead they can search and they permitted the constables to search the persons and they also served notice to

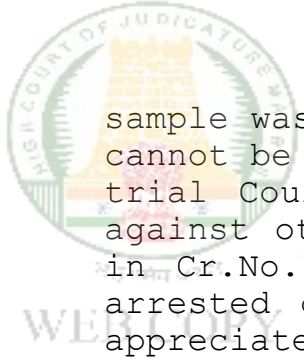


the appellant and the appellant also received notice and he voluntarily handed over the bag and thereafter the police party recovered the bag and found 15kg of Ganja and recovered the same and Ganja sample was taken and they have also sealed in accordance with the provisions of law. Thereafter prepared mahazhar and they obtained signatures from the witnesses as well as the appellant herein and arrested the accused in the presence of witnesses and prepared report under Section 57 of the NDPS Act and also sent a report to the Inspector of Police.

10. PW5 Inspector of Police, corroborated the evidence of PW4 and stated that PW 4 informed him over phone about the information and he also gave direction to PW 4 and also took constable as mentioned above and after completing procedural formalities filed report under Section 57 of the N.D.P.S. Act along with the appellant. Thereafter he sent the registered First Information Report, seized contraband and the accused to the Court and after investigation he filed charge sheet under Section 8(C) r/w.20(b) (ii) (B) of NDPS Act.

11. PW1 who is Scientific Officer has deposed that on 05.04.2002 he received a letter from the Court and sample of Ganja weighing about 35 grams and one weighing about 25 gm was also examined and sent report along with balance Ganja and he has stated that the report shows that the sample received from the Court is Ganja. P.W.3, who accompanied with P.W.4 who has corroborated the evidence of PW4. The evidence of P.W.3,4 and 5 corroborated each other. P.W.1 Scientific Officer who has also spoken about the fact that the seized contraband from the Court is Ganja and therefore the evidence of PW.1 to PW5 is cogent and trustworthy, there is no reason to disbelieve the evidence of PW3 and PW4 and thus, the prosecution has proved the case beyond all reasonable doubts.

12. Though the counsel for the appellant would submit that five persons were found in the said occurrence place, the case has been registered against one person only, when the appellant was found in possession of Ganja, either he must show the license possessing for Ganja or permission from the Government to possess Ganja and also the recovery was proved by the prosecution that the alleged Ganja is recovered from appellant. When the appellant was found in possession of Ganja without having any license or permission from the Government, it is for the appellant to show that he has got licence to have Ganja or permission to possess the same. The witnesses have clearly established that they also went to the place of occurrence and recovered contraband from the appellant and also mandatory provisions contemplated under NDPS Act were duly complied with. Though the learned counsel for the appellant would submit that there is discrepancy regarding weight of the sample Ganja sent by Court and examined by PW1 and the property was recovered on 20.03.2002, PW.1 received the same on 05.04.2002. PW1 has clearly stated that the seal of the



sample was intact and therefore difference in weight in the sample cannot be a ground to disbelieve the case of the prosecution. The trial Court has also given the reason for the same. The cases against other persons were registered under separate crime numbers in Cr.No.74 to 78 of 2002 against all the persons who were all arrested on the said occurrence. The trial Court court has re-appreciated the prosecution witnesses, the prosecution has proved its case beyond reasonable doubts and the contention raised by the learned counsel for the appellant is not a reason for disbelieving the case of the prosecution and this Court found that the prosecution has proved the case beyond reasonable doubts.

13. In view of the discussion held above, this Court does not find any merit in the appeal and the same is liable to be dismissed.

14. In the result, the present criminal appeal is dismissed. The Judgment of the Trial Court regarding conviction is sustained. So far as the sentence is concerned, the accused was sentenced to undergo three years Rigorous Imprisonment. Since the case is of the year 2002 and 17 years lapsed, to meet the ends of justice, it would be just and proper to award one year Rigorous imprisonment for the offence under Section 8(C)r/w.20(b)(ii)(B) of NDPS Act. In respect of the imposition of fine amount is concerned, the same is confirmed.

15. With the above modification, the criminal appeal is dismissed. The trial court would see that the accused/appellant serve out the unserved part of sentence. The counsel who argued the appeal for the appellant was appointed by the Legal Services Authority from the legal aid panel, hence he is entitled for fees as per rule.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Special District and Sessions Judge (for NDPS Cases) Madurai

2. The Legal Services Authority, Madurai.

3. The Inspector of Police
NIB-CID Police, Theni District

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



5. The Record Keeper, criminal Section
Madurai Bench of Madras High Court, Madurai.(2 copies)

6. The Superintendent Central Prison for men, Madurai.

+1CC TO MR.R.JEGADEESWARAN, Advocate Sr. No. 78704

Crl.A.(MD)No.463 of 2008
27.07.2019

AL(CO)

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