



The Appellant / Accused No.2 namely Karthick, S/o.Sankaranarayanan was released on bail by this Hon'ble Court made in MP(MD).No.2/2009 in CrI.A(MD).No.167/2009 dated 20.08.2009.

The Appellant / Accused No.1 namely Rajaram, S/o.Perumal was released on bail by this Hon'ble Court made in MP(MD).No.2/2009 in CrI.A(MD).No.264/2009 dated 11.09.2009.

The Appellant / Accused No.3 namely R.Murugan, S/o.Raman was released on bail by this Hon'ble Court made in MP(MD).No.2/2010 in CrI.A(MD).No.146/2010 dated 28.04.2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD)Nos.167 and 264 of 2009
and
CrI.A.(MD)No.146 of 2010

Karthick	... Appellant/Accused No.2 in CrI.A.(MD)No.167 of 2009
Rajaram	... Appellant/Accused No.1 in CrI.A.(MD)No.264 of 2009
R.Murugan	... Appellant/Accused No.3 in CrI.A.(MD)No.146 of 2010

Vs.

State through The Inspector of Police, NIB CID, Ramanathapuram District.	... Respondent/Complainant in all Criminal Appeals (Crime No.46 of 2005)
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Common Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to call for the records relating to the judgment in C.C.No.726 of 2005, dated 16.07.2008, on the file of the Additional District and Sessions Judge cum Special Judge (EC Act and NDPS Act Casts), Pudukottai and set aside the same and acquit the appellants/accused from all the charges leveled against them.



For Appellant : Mr.M.Gopala Krishna Lakshmana
(in CrI.A.(MD)No.167 of 2009) Rajan, Senior Counsel
For Mr.R.Venkateswaran

For Appellant : Mr.R.Alagumani
(in CrI.A.(MD)No.264 of 2009)

For Appellant : No appearance
(in CrI.A.(MD)No.146 of 2010)

For Respondent : Mr.A.Robinson
(in all Criminal Appeals) Government Advocate (CrI. Side)

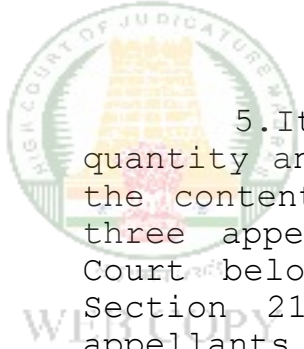
C O M M O N J U D G M E N T

In C.C.No.726 of 2005, on the file of the learned Additional District and Sessions Court Cum Special Court for EC Act and NDPS Act Cases, Pudukkottai, the three appellants herein faced trial for the offence under Section 8(c) r/w. 21(C) of Narcotic Drugs and Psychotropic Substances Act, 1985. Accused pleaded not guilty and claimed to be tried.

2.The prosecution examined as many as six witnesses and marked Exs.1 to 16. M.O.1 to M.O.9 were also marked. On the side of the accused no evidence was adduced.

3.The learned Trial Judge by judgment dated 16.07.2008 convicted the appellants herein for the offence with which they were charged and sentenced them to undergo ten years rigorous imprisonment. They were also levied with fine of Rs.1,00,000/- each. Default sentence was also imposed. Challenging the same, the appellants have filed these independent criminal appeals before this Court.

4.When the matter was taken up for hearing, the learned Senior Counsel appearing for the appellants submitted that even though he has got a meritorious case, taking note of the long period of incarceration undergone by the appellants, he would only pray for modification of the conviction and sentence. The learned Senior Counsel would draw my attention to the fact that even though the heroin seized from each of the accused/appellant is 500 grams, on being tested, it was revealed that the actual content of diacetylmorphine was only 76.2 grams in the sample taken from the first accused, 135 grams in the sample taken from the second accused and 86.7 grams in one taken from the third accused. The learned Senior Counsel relied on the decision of the Honourable Supreme Court reported in [2008 AIR SCW 2365 (E.Micheal Raj Vs. Intelligence Officer, Narcotic Contral Bureau)]. It was held that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance, for the purpose of imposition of punishment it is content of the narcotic drug or psychotropic substance which shall be taken into consideration.



5.It is seen that while 5 grms of Heroin will be small quantity and 250 grms of Heroin will be commercial quantity. Since the content of Heroin found in the contraband in respect of all three appellants is less than 250 grms/commercial quantity, the Court below erred in finding them guilty of the offence under Section 21(c) of NDPS Act. Therefore, the conviction on the appellants is modified to one under Section 21(b) of NDPS Act.

6.It is also seen that the first accused has spent 1142 days in prison, the third accused had also spent 1142 days in prison and second accused had spent about four years in prison. Taking note of the long period of incarceration undergone by the appellants, this Court deems it fit to modify and reduce their sentence to the period already undergone. It is also seen that the appellants were unable to remit the fine amount of Rs.1,00,000/- imposed on them. When this Court granted bail to the appellants, the first accused was directed to pay a sum of Rs.25,000/-, the second accused was directed to pay Rs.50,000/- and the third accused was unable to pay any fine amount. Therefore, taking note of the economic background, the fine amount imposed on the first accused is reduced to Rs.25,000/- and the second accused is reduced to Rs.50,000/-. The fine amount imposed on the third accused is set aside. These criminal appeals are partly allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Additional District and Sessions Judge cum
Special Judge (EC Act and NDPS Act Casts), Pudukottai.
- 2.The Inspector of Police,
NIB CID, Ramanathapuram District.
- 3.The Superintendent, Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Principal Sessions Judge, Pudukkottai.

+1cc to Mr.R.Venkateswaran, Advocate, SR.No.76623

+1cc to Dr.R.Alagumani, Advocate, SR.No.75883

CrI.A.(MD)Nos.167 and 264 of 2009
and

CrI.A.(MD)No.146 of 2010
17.07.2019