

**Bail Slip**

Mr.Kottaisamy, S/o.Gurusamy, aged about 30 years was released on bail vide order of this Court in MP(MD) No.1 of 2010 in CrI.A(MD)No.160 of 2010 dated 15.09.2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 09.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI.A(MD)No.160 of 2010**

Kottaisamy

... Appellant/Accused

Vs

State represented by,
The Inspector of Police,
Sivakasi East Police Station,
Sivakasi.

... Respondent/Respondent

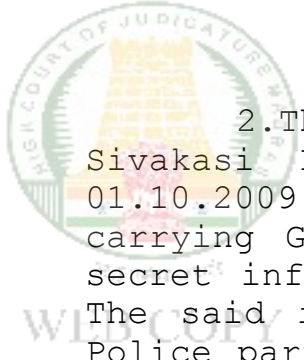
PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment of the learned Additional District and Sessions Judge, Special Court for E.C.Act cases, Pudukkottai passed in C.C.No.112 of 2009, dated 01.04.2010 convicting the appellant/accused under Section 8(c) read with 20(B) (11) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs.10,000/-, in default of payment of the fine amount to undergo further rigorous imprisonment for six months.

For Appellant : Mr.P.Ramachanthiran

For Respondent : Mr.A.Robinson
Government Advocate (CrI.side)

JUDGMENT

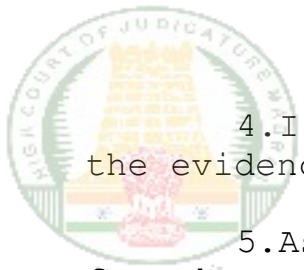
The appellant herein was tried for the offences under Sections 8(c) read with 20(B) (11) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in C.C.No.112 of 2009 on the file of the Additional District and Sessions Judge, Special Court for E.C. Act Cases, Pudukkottai. He was found guilty and sentenced to two years rigorous imprisonment and also levied with fine of Rs.10,000/-, vide Judgment dated 01.04.2010. Challenging the same, this appeal has been filed.



2. The case of the prosecution is that the Head Constable of Sivakasi East Police Station received secret information on 01.10.2009 at about 1.00 p.m., that the appellant herein was carrying Ganja and was coming in Sivakasi - Sathur Road. The secret informant agreed to identify the appellant to the Police. The said information was recorded in the station diary and the Police party went to Anupangulam in Sivakasi to Sethur Road which was at a distance of about a furlong from the bus stop. When the police party was waiting, the appellant was coming in a bicycle. Seeing the police party, he tried to turn away. The Police party stopped him and they found the Ganja bag in the cycle carrier. The Police was said to have informed the appellant that since they have reliable and credible information that he was carrying a narcotic contraband, they were required to search him. The appellant was informed about his right to insist that search should be conducted only in the presence of the Gazetted Officer or Judicial Magistrate. The appellant was said to have waived the said right and gave his consent in writing. Since the independent witnesses were not forthcoming, the search was done in the presence of the Police witnesses. The Ganja Bag on the carrier of the bicycle was also seized and on examination of its content, it was noted that it was Ganja. When it was weighed, it was around 25 Kilograms and 500 grams. Thereupon, the accused along with the recovered contraband was brought to the station and Crime No.813 of 2009 was registered on the file of the Sivakasi East Police Station for the offences under Sections 8(c) read with 20(B) (11) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Investigation was undertaken and after completing all the formalities, final report was filed. Cognizance of the offences under Sections 8(c) read with 20(B) (11) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 was taken. The appellant pleaded not guilty to the charge and claimed to be tried. The prosecution examined as many as four witnesses and marked Ex.p1 to Ex.P9. M.O.1 to M.O.4 were also marked. The appellant did not adduce any defence evidence. The learned Special Judge, by Judgment dated 01.04.2010, came to the conclusion that the appellant was found in possession of 20 Kilograms of Ganja and since it was not a commercial quantity, the appellant was sentenced to two years rigorous imprisonment and levied with fine of Rs.10,000/-. Challenging the same, this appeal came to be filed.

2. The learned counsel appearing for the appellant pointed out the discrepancies appearing in the prosecution case and wanted this Court to set aside the impugned Judgment.

3. Per contra, the learned Government Advocate (Crl.side) wanted this Court to sustain the impugned Judgment and dismiss the

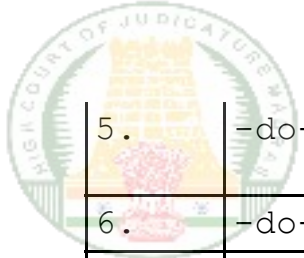


4.I carefully considered the rival contentions and perused the evidence on record.

5.As rightly pointed out by the learned counsel appearing for the appellant, P.W.1 to P.W.4 are none other than the police personnels. P.W.1 is the Head Constable who received the secret information. P.W.2 is the another Head Constable. P.W.3 is the Sub Inspector of Police who registered the FIR and P.W.4 is the Inspector of Police who carried out the investigation. It is not in dispute that as may as 11 cases were pending against the appellant herein on the file of the Sivakasi East Police Station. Thus, the appellant is not some body who was a stranger to the Police. There was no need for identifying the appellant to the Police. In any event, even according to the prosecution, the secret information given by the Stella Pandi triggered the legal process against the appellant. Stella Pandi had accompanied the police party to arrest the appellant and recover M.O.1 to M.O.3. But then, Stella Pandi was not shown as a witness in Ex.P3.

6.The learned counsel appearing for the appellant also pointed out that even according to the prosecution, the contraband was kept in a Ganja Bag on the carrier of the bicycle. Therefore, there was no need to take the consent of the appellant for conducting a search. But then, the consent letter-Ex.P2 was taken from the appellant. P.W.3-Sub Inspector of Police who registered the FIR (Ex.P5), admitted in the cross examination that he did not write the contents of Ex.P2. It was Vellai Pandi who written Ex.P2. The signature of the appellant was taken therein. Vellai Pandi was also not examined as witness. The quantum is also a matter of doubt. While according to P.W.2, there were six packets. P.W.1 would claim that after taking samples in two packets, the balance quantity of 21 Kg was in a single bag. The evidence of P.W.1 and P.W.2 do not tally with each other. P.W.2 would further claim that on each of the sealed packets, crime number was also written. This could not have been true, because, after bringing the accused to the station and after completing the other formalities, FIR could have been registered. This again throws considerable doubt on the very recovery. It is seen that against the appellant as many as 11 cases have been pending on the file of the Sivakasi East Police Station right from the year 2002 till 2009. The details are as under:-

SI.No	Police Station	Crime No	Sec of Law	Stage
1.	SVK[E] Ps	205/02	457, 511 IPC	Acq
2.	-do-	846/02	379 IPC	Acq
3.	-do-	187/05	110 Crpc	Con
4.	-do-	383/05	393 r/w 398 IPC	Acq



5.	-do-	379/06	151 Crpc r/w 7(1) (a) CL Act	Con
6.	-do-	286/06	393 r/w 398 IPC	Acq
7.	-do-	101/07	324 IPC	PT
8.	-do-	362/07	110 [e & f] Crpc	Con
9.	-do-	339/07	341, 323 IPC	Con
10.	-do-	860/08	387 IPC	PT
11.	-do-	4/09	341, 307 IPC	PT

7.I find considerable merit in the contention of the appellant's counsel that as the appellant appears to be a habitual offender, in order to detain him and to prevent him from coming out on bail, he was implicated in a case of commercial quantity of Ganja. There is also some discrepancy between the testimony of P.W.1 and P.W.3 with regard to the manner in which, the contraband was weighed. That is why, the trial Court took the view that it could not be definitely asserted that the quantity was a commercial quantity. The impugned Judgement rests primary on Ex.P2-consent letter given by the appellant. As rightly pointed out by the appellant's counsel, there was no need whatsoever to take the appellant's consent at all. This gives an impression that in order to reinforce the prosecution case, such a letter was taken from the appellant.

8.I am of the view that in order to detain a habitual offender and to prevent him from coming out on bail, he was implicated in this case. The discrepancies set out above throw considerable doubt on the prosecution case. The case is one under the NDPS Act, 1955. Therefore, the prosecution was bound to discharge its burden and the rigour cannot be relaxed. I hold that the prosecution failed to prove its case beyond reasonable doubt. The Judgment of the Court below is set aside. This criminal appeal is allowed. The appellant is acquitted. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The Additional District and Sessions Judge,
Special Court for E.C.Act cases, Pudukkottai.
- 2.The Principal Sessions Judge,
Pududkkottai.
- 3.The District Collector,
Pudukkottai.
- 4.The Director General of Police,
Mylapore, Chennai.
- 5.The Superintendent of Central Prison,
Madurai.
- 6.The The Inspector of Police,
Sivakasi East Police Station,
Sivakasi.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 8.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court
Madurai.

Cr1.A(MD)No.160 of 2010
09.07.2019

CS(06.08.2019) 5P 10C