

**BAIL SLIP**

The Appellant/3rd Accused namely R.Ravi Thomas, S/o.Rajamuthu was directed to be released on bail as per order of this Court dated 30.04.2013 and made in MP(MD)No.s 1 of 2013 in Cr1 A(MD)No.138 of 2013 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 06.08.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.A.(MD)No.138 of 2013**

R.Ravi Thomas

... Appellant /Accused No.3

Vs.

State Represented by
The Forest Range Officer,
Sankarankoil Forest Range,
Forest Office,
Tirunelveli District.
(Crime No.105 of 2005)

... Respondent /Complainant

Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to call for the records in C.C.No.102 of 2018, dated 20.03.2013, on the file of the learned II Additional Special Court for NDPS Act Cases, Madurai in Crime No.105 of 2005, on the file of the respondent police and set aside the same and acquit the appellant/Accused No.3.

For Appellant : Mr.T.Lajapathi Roy

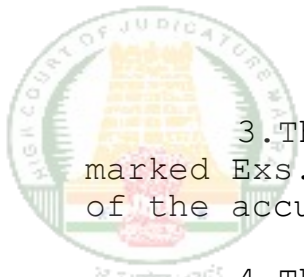
For Respondent : Mr.A.Robinson

Government Advocate (Cr1. Side)

J U D G M E N T

The appellant along with two others was convicted for the offences under Section 21(d)(g) of Tamil Nadu Forest Act, 1882 and Section 8(b) r/w. 20(a)(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo two years rigorous imprisonment and five years rigorous imprisonment respectively and he was also levied with fine for both the offences.

2.The prosecution case is that on 21.10.2005 at about 07.00 a.m. when the officials of the Forest Department conducted a raid, they came to know that the accused, who were three in number had not only committed trespass into forest land but also had cultivated cannabis at Korampallam, Sankarankovil Forest Division. In this regard, Crime No.105 of 2005 was registered and the Forest Range Officer filed wildlife report before the Special Court. The same was taken on file in C.C.No.102 of 2008. The accused pleaded not guilty to the charges and claimed to be tried.



3. The prosecution examined as many as five witnesses and marked Exs.1 to 10. M.O.1 to M.O.13 were also marked. On the side of the accused no evidence was adduced.

4. The Trial Judge by judgment dated 20.03.2013 in C.C.No.102 of 2008 found the accused guilty sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5. Heard the learned counsel on either side and perused the evidence on record.

6. The case on hand involves not only the forest offence but also the offence under the provisions of NDPS Act. The learned counsel for the appellant submitted that in this case the seizure was made by the Forest Guard. He has not been delegated the power under Section 42(1) of the NDPS Act.

7. The learned counsel appearing for the appellant drew my attention to the decision of this Court reported in **[(2008) 1 MLJ (Cr1) 62, (A.Stephen Vs. Forest Guard)]**. The relevant paragraphs read as under:-

'8.G.O.Ms.No.161 Prohibition Excise (VII) Department dated 12.08.1992 delegates the power under Section 42 (1) to various officers and the following portion from the G.O. is extracted here under:

"Under Sub-section (1) of section 42 and Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), the Governor of Tamil Nadu hereby empowers and respectively authorises the officers specified below for the purposes of the said Sections 42 and 67 of the said Act. Officers:

1. Police Officer not below the rank of a Head Constable in the State Police Department including Special Units.

2. Revenue Officer not below the rank of a Revenue Inspector in the State Revenue Department.

3. Excise Officer not below the rank of an Excise Inspector in the State Excise Department.

4. Forest Officer not below the rank of a Forester in the State Forest Department." (Emphasis added) Therefore, on the strength of the above G.O., it is contended that the Forest Ranger is above the Forester and hence the proceedings initiated was legally valid.

16. Therefore, it is clear that the safeguard given under Sections 42(1) and 50 are mandatory. The present case in so far as the seizure was made by the Forest Guard to whom the power has not been delegated under Section 42 (1) and he had also prepared the H- Form shows the infringement of the provisions of the NDPS Act. The



contentions of the petitioner are that he was disabled from defending himself before the Magistrate to whom requisition was given and he was also remanded for custody were all glaring violations of the provisions of the NDPS Act and merits acceptance by this Court.''

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8. In this case it is not in dispute that the seizure was made only by the Forest Guard and by not any official, who has been clothed with the delegated power. Therefore, seizure made in this case by an incompetent official is clearly bad in law. Hence, the conviction of the appellant for the offence under Section 8(b) r/w. 20(a)(i) of NDPS Act is clearly illegal. Therefore, the conviction and sentence of the appellant for the offence under Section 8(b) r/w. 20(a)(i) of NDPS Act is set aside.

9. However, the learned counsel for the appellant submitted that he would not challenge the finding of guilt for the offence under Section 21(d)(g) of Tamil Nadu Forest Act. However, he submitted that the sentence may be reduced to the period already undergone by him. It is seen that the occurrence dates back to the year 2005. The appellant is a tribal. The appellant is not having any bad antecedent. He has not come under adverse notice of the respondent after this occurrence also. He was in prison for about 60 days. The appellant is having five children to support. Therefore, taking note of the lapse of time and other mitigating factors, even while sustaining the conviction for the offence under Section 21(d)(g) of Tamil Nadu Forest Act, the sentence imposed on him is modified and reduced to the period already undergone. This criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The II Additional Special Court
for NDPS Act Cases,
Madurai.

2. The Forest Range Officer,
Sankarankoil Forest Range,
Forest Office,
Tirunelveli District.

3. The Superintendent,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison, Madurai



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

Copy to: The Section Officer,
Criminal Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-80194[F] dated
07/08/2019)

Crl.A. (MD) No.138 of 2013

06.08.2019

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