

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2020

Pronounced on : 05.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE **P.N.PRAKASH**

Crl.M.P.No.5052 of 2020
in Crl.R.C.No.704 o 2020

Babu

.. Petitioner / Petitioner / Appellant /
Accused

Vs.

State, rep by
The Inspector of Police
PEW Periyapalayam Police Station
Thiruvallur District.
(Crime No.771 of 2015)

.. Respondent / Respondent / Respondent /
Complainant

Criminal Miscellaneous Petition filed under Section 389 r/w.439 Cr.P.C., praying to suspend the sentence and conviction imposed by the order dated 31.01.2020 made in Crl.Appeal No.56/2019 on the file of the I Additional District Sessions Court, Thiruvallur, which partly modified the judgment passed in S.C.No.109 of 2017, dated 02.03.2019, on the file of the Assistant Sessions Court, Thiruvallur, till the disposal of the above Criminal Revision Petition.

For Petitioner : Mr.R.Sasikumar
for Mr.V.R.Appaswamee

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl Side)

ORDER

This case is taken up through video conferencing.

2. This petition is filed to suspend the the sentence and conviction imposed by the I Additional District Sessions Court, Thiruvallur, in Crl.Appeal No.56/2019, who vide its order dated 31.01.2020, allowed the appeal in part by modifying the judgment of the Assistant Sessions Court, Thiruvallur passed in S.C.No.109 of 2017, dated 02.03.2019.

3. It is the case of the prosecution that on 28.11.2015 at around 14.30 hrs., the police intercepted the petitioner and recovered from him 41 nos. of 180 ml. Brand bottles without label. The petitioner did not have any licence for possession of the same. Hence, the respondent-police registered a case in Crime No.771/2015, under the Tamil Nadu Prohibition Act 1937, and after completing the investigation, filed a final report in PRC.No.9/2015 before the Judicial Magistrate No.I, Tiruvallur. for the offence under Section 4(1)(a) r/w.4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 against the petitioner.

Thereafter, it was committed and was taken on file in S.C.No.109/2017, and was made to the Assistant Sessions Court, Tiruvallur, for trial. The trial Court framed charges against the petitioner/accused for the aforesaid offences and when he was questioned under Section 251 Cr.P.C., he denied the accusation.

4. To prove, the prosecution examined 7 witnesses and marked Exts.P1 to P10. No witnesses were examined from the side of the petitioner.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

6. After considering the evidence on record, the trial Court, by judgment and order dated 02.03.2019, convicted the petitioner and sentenced him to undergo three months imprisonment u/s. 4(1)(a) of TNP Act and one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment u/s. 4(1-A)(ii) of TNP Act, aggrieved which, Crl.A.No.56/2019 was filed by the petitioner before the I Additional District and Sessions Judge, Tiruvallur, and the learned Sessions Judge by order dated 31.01.2020, set aside the sentence imposed by the trial Court for offence under Section 4(1)(a), however, since the petitioner was

found guilty of offence under Section 4(1)9a) r/w. 4(1-A)(ii) of TNP Act, the petitioner was directed to undergo rigorous imprisonment of one year and to pay a fine of Rs.1,000/-, failing which to undergo three months imprisonment in default.

7. Challenging the concurrent findings of the Courts below, the petitioner has filed the present revision petition u/s.397 r/w.401 Cr.P.C.,

8. Heard Mr.R.Sasikumar, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

9. It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See *State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.* (2004) 7 SCC 659]. Very recently, in *Bir Singh Vs. Mukesh Kumar* [(2019) 4 SCC 197], the Supreme Court has held as under:

“17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a

well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. ”

(emphasis supplied)

10. The seizure from the petitioner was effected by Muthu (P.W.1) and his evidence has been adequately corroborated by Shanmuga Durai (P.W.2), and that Sampath (P.W.3) has attested the seizure mahazar, in whose presence seizure was effected. Dr.Anuradha (P.W.4) in her evidence has stated that the seizure liquor contained a drug called 'atropine' which is harmful to health. The presence of 'atropine' in the liquor has been spoken to by Mrs.Kala (P.W.6), who is the Deputy Director in Forensic Department.

11. Thus, this Court does not find any infirmity in the findings of the two Courts below warranting interference.

12. The learned counsel appearing for the petitioner submitted that the petitioner is in custody from 25.02.2020 onwards and hence, the sentence imposed by the Courts below may be reduced. This submission merits consideration.

13. This revision petition is partly allowed. The conviction imposed by the Courts below stand confirmed. However, as regard the sentence imposed, the same is reduced to the period of incarceration already undergone by the petitioner. The petitioner shall be released from custody, if he is not required in any other case.

05.10.2020

ds

Index : Yes / No

Speaking Order / Non-speaking Order

To:

1.The Inspector of Police
PEW Periyapalayam Police Station
Thiruvallur District.

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.

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P.N.PRAKASH, J.

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Pre-delivery order in
Crl.M.P.No.5052 of 2020
in Crl.R.C.No.704 o 2020

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