



BAIL SLIP

Kalimuthu, S/o.Kalimuthu, male, aged, 55 years (Sole Accused) was released on bail, vide court order dated 14/07/2015, made in MP(MD)No.1/2015 in CRL A(MD).155 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	27.02.2020
Date of Judgment	24.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A(MD)No.155 of 2015**

Kalimuthu : Appellant/Accused

Vs.

The Inspector of Police,
Prohibition and Enforcement Wing,
Alangudi,
Pudukkottai District.
(Crime No.238 of 2013)

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code, against the judgment passed by the Additional District and Sessions Judge, Essential Commodities Act, NDPS Act cases, Pudukkottai, in S.C No.129 of 2013, dated 23.04.2015.

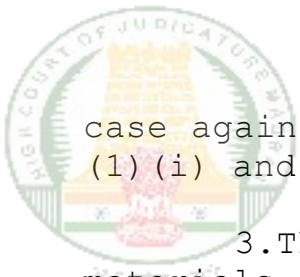
For Appellant : Mr.S.Ramakrishnan
for Mr.B.Jameel Arasu

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the Additional District and Sessions Judge, Essential Commodities Act, NDPS Act cases, Pudukkottai, in S.C No.129 of 2013, dated 23.04.2015.

2.According to the prosecution, on 05.05.2013 at about 11.30 am, the appellant was selling spurious liquor, at that time, PW2 to PW4, who are police officials went to the place accompanied by PW1, who was an independent witness and at that time, it was found that 170 litres of spurious liquor in possession of the appellant. In this connection, the respondent police registered a



case against the appellant/accused for the offence under section 4 (1) (i) and 4(i) (aaa) of the Tamil Nadu Prohibition Act.

3.The trial court, after proper appreciation of the entire materials available on record, found the appellant/accused guilty, convicted and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.5,000/-, in default to undergo 3 months of rigorous imprisonment for the offence under section 4(1) (i) and also convicted for the offence under section 4 (i) (aaa) of the Tamil Nadu Prohibition Act and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.5,000/-, in default to undergo 3 months rigorous imprisonment and directed the sentences to run concurrently. Aggrieved by the judgment of the trial court, the appellant/accused is before this court.

4.Heard both sides and perused the materials available on record.

5.The first contention raised on the side of the appellant/accused is that the complainant himself turned hostile and hence, Ex.P7 complaint was not at all marked through the complainant and hence, relying on the said document is contrary to the well established rules and hence, the complaint cannot be relied upon and only based on the police witness, the accused cannot be convicted, since no iota of evidence or concrete proof to show that there was any occurrence as stated in the complaint and hence, the conviction and sentence imposed is liable to be set aside.

6.In this case, in respect of the alleged occurrence, PW1 gave Ex.P7 complaint. As per the prosecution case, PW1 only gave Ex.P7 complaint. But PW1 during his chief examination stated that he did not know the occurrence and he has not given the complaint and he did not know the contents of the complaint. The complaint is the basis of the case. But the complainant turned hostile and did not support the case of the prosecution. Hence, it creates doubt about the prosecution case.

7.In this case, PW2, PW3 and PW4 along with the informant went to raid on Kakaikone Hostel and at that time, they found the accused in a suspected manner in his vehicle and inspected three tubes containing liquor and no independent persons agreed to stand as witness and hence, in their presence the above properties were recovered and they took liquor in two bottles for analysis and they destroyed the remaining liquor and PW4 arrested the accused and they brought the accused to the police station and registered the case.



8. PW4 during his evidence stated that he called independent person to stand as witness. But no one come to stand as witness and in PW2 and PW3's presence, he recovered the liquor from the accused and arrested the accused and brought him to the police station. When the independent person refused to stand as witness, PW2 has not taken any action as against such person under the criminal proceedings. Without taking any criminal proceedings as against the independent person, who refused to stand as witness, the evidence of PW4 stating that they called the independent persons to stand as witness, but they refused is not at all acceptable. It is to be noted that PW2 admitted during his cross examination that there are some independent houses are found nearby the house of the accused. In several cases, the Hon'ble Apex Court held that they are independent persons available nearby the vicinity of the place of occurrence and no steps were taken by the prosecution to examine the witnesses, it is fatal to the prosecution. Hence, it is held that non-examination of independent persons is fatal to the prosecution.

9. The next contention raised on the side of the appellant/accused is that the chemical analysis report was not produced through the proper person and the non examination of chemical analyst and the Head Clerk, who received the chemical report is fatal to the prosecution.

10. In this case, the chemical analyst was not examined. Further, the Head Clerk of Judicial Magistrate Court who received the chemical report was not examined. No explanation was given for the non-examination of the above persons. They are the material witnesses. Hence, it is held that the non-examination of the material witnesses is fatal to the prosecution.

11. In this case, PW4 arrested the accused. He has not taken any steps to record the confession of the accused. Further, he has not prepared the observation magazar and rough sketch. On perusal of Ex.P2, it is found that there are some corrections. It was admitted by PW4 during his cross examination. Further, PW4 during his cross examination stated that Ex.P2 was written by Baskar. But he was not either cited as witness or examined. PW4 recorded the statement of the witness on 05.05.2013. But PW4 signed as 15.05.2013. Further, PW4 admitted that he has not recorded any statement on 15.05.2013. Hence, it is doubtful that PW4 recorded the statement of the witness on 05.05.2013 or 15.05.2013. Hence, it is held that there are lot of contradictions in the evidence of PW2 to PW4. Therefore, it creates doubt about the prosecution case.



12. The trial court without properly analysing the above aspects, had erroneously given a findings, which according to this court is liable to be set aside and accordingly, it is set aside.

13. In the result, this Criminal Appeal is **allowed**. The impugned judgment of conviction and sentence are set aside. The Appellant/Accused is acquitted of the charge(s) levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To,

1. The Additional District and Sessions Judge/
Presiding Officer,
Special Court for EC Act cases,
Pudukkottai.

2. The Superintendent, Central Prison, Tiruchirappalli.

3. The Inspector of Police,
Prohibition and Enforcement Wing,
Alangudi,
Pudukkottai District.

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

5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

Cr1.A.(MD)No.155 of 2015
24.06.2020

AL(CO)

TR(24.07.2020) 4P 7C