

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.A.No.260 of 2021
and
Crl.M.P.No.5876 of 2021

Chinnaraj, M/63,
S/o.Anumuthu Gounder,
residing at D.No.2/64,
Kodumampalli Village & Post,
Kudapattu,
Tirupattur District. ... Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
NIB CID,
Vellore District.
(Crime No.34 of 2020) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 26.02.2021, in Spl.C.C.No.6 of 2021, on the file of the Special Court for EC/NDPS Act Cases, Salem.

For Appellant : Mr.Udayakumar
For M/s.Karan and Uday

For Respondent : Mr.J.C.Durairaj
Counsel for Government of
Tamil Nadu (Crl. Side)

J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentence, dated 26.02.2021, in Spl.C.C.No.6 of 2021, on the file of the Special Court for EC/NDPS Act Cases, Salem.

2.The case of the prosecution is that the appellant/accused cultivated Ganja plants in his 10 cents of land, weighing about 4.100 kg, and the respondent police arrested the accused on 07.10.2020 at about 09.30 hours and thereafter, he was charge-

sheeted for the offences under Sections 8(b) r/w. 20(a)(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

3.While framing the charges, the accused/appellant pleaded guilty. Based on the same, the trial Court convicted the accused/appellant under Sections 8(b) r/w. 20(a)(i) of NDPS Act and sentenced him to undergo five years Rigorous Imprisonment and also to pay a fine of Rs.20,000/-, in default, to undergo one year Rigorous Imprisonment.

4.Challenging the judgment of conviction and sentence, the appellant/accused has preferred this appeal before this Court.

5.The learned counsel appearing for the appellant/accused submitted that the charge framed against the appellant / accused is grave in nature. The trial Court, without any material, used its discretion mechanically. The trial Court ought not to have proceeded to convict the appellant / accused without directing the prosecution to prove all the charges. The learned counsel submitted that the entire process of the trial Court is vitiated in view of the decision of this Court reported in (2016) 4 MLJ (Cr1) 378 (in the case of Gopal v. Inspector of Police, Machinakudi Police Station, Koodalur, Nilgiris District) and an unreported judgment of this Court in Criminal Appeal (MD) No.171 of 2008, dated 10.03.2015, in the case of Chithira v. Inspector of Police, B-7, Thideer Nagar (L & O) Police Station, Madurai City.

6.Mr.J.C.Durairaj, learned counsel for Government of Tamil Nadu (Cr1. Side), submitted that, considering the gravity of the offence, the appeal is liable to be dismissed.

7.Heard the learned counsel on either side and perused the materials available on record.

8.The Division Bench of this Court in (2016) 4 MLJ (Cr1) 378 (cited supra) has held as follows:

"14.In the Constitution of India, several provisions have been enshrined for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development. These provisions would be meaningless and ineffectual unless there is rule of law to invest them with life and force. What is the necessary element of the rule of law is that the law must not be arbitrary and irrational and it must satisfy the test of reasons. Article 21 is the heart of all these provisions which guarantees dignified life and personal liberty. It

mandates that no person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by law or in its converse positive form, a person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by a valid law. Unfortunately, the discretion vested in the court under Section 229 of the new Code is in tune with Article 21 of the Constitution of India to ensure a fair trial to an accused. Section 229 of the new Code, of course, makes it mandatory that if the accused pleads guilty, the Court shall record the said plea. If once it is so recorded, the latter part of Section 229 of the new Code makes it undoubtedly clear that in its discretion, the court may convict the accused thereon. How the discretion should be exercised by the court has not been defined or no guidelines have been formulated by the legislature. The exercise of such undefined discretion is always more difficult and uncertain. It is left to the Judge to grope in the dark for himself and in the exercise of his unguided and unfettered discretion decide what reasons may be considered to use his discretion justifying conviction. What may appear to be the reasons justifying for conviction of an accused on the plea of guilty for one judge, may be found either unreasonable or insufficient to convict him on the plea of guilty, to the another judge. Thus, in the absence of any expected legislative policy guiding the said discretion under Section 229 of the new Code, it is for the judges to be guided by the judge-made laws and by using their judicial prudence.

15. In our considered view, in this scenario, before acting solely on the plea of guilty, essentially, the court should be fully satisfied that the accused had understood the nature of the charge levelled against him. A common man, more particularly, an illiterate poor man hailing from a remote corner of this country, may not know what the offence of murder in the context of the Indian Penal Code is. It is the common man's understanding that killing of a human being by another is a murder. The vast majority of people of this country do not know as to when a homicide amounts to a culpable homicide; when culpable homicide amounts to a murder and when the special exceptions appended to Section 300 of IPC would reduce the offence again into a culpable homicide. Similarly, the accused may not know as to whether his act would

fall under anyone of the general exceptions. He may not know whether the death was directly due to the violence caused by him or due to some other natural cause. Whether the offence committed by the accused is a mere culpable homicide or murder requires a deep analysis of the background of the entire occurrence. The accused may not know those backgrounds which actually may make out the difference between culpable homicide not amounting to murder and murder. Going by his common understanding that killing a person is a murder, when he is questioned under Section 228 of the new Code, he may plead guilty. When an accused, without knowing these nuances, pleads, guilty, there is a danger of conviction for him for an offence that he has not committed. Similarly in the matter of sentencing also, vast discretion has been given to the court. For proper exercise of this discretion, the mitigating as well as aggravating circumstances which would guide the court to decide about the proportionate sentence for the offence committed are to be placed before the court. The mitigating circumstances may not be brought on record when the court simply acts upon the plea of guilty. Thus, without judging the proportionate quantum of sentence to be imposed, if disproportionate sentence is imposed upon the accused by the court, it may amount to injustice."

9. Similarly, in Criminal Appeal (MD) No. 171 of 2008 (cited supra), this Court has held as follows:

"9. It is pointed out by the learned Amicus Curiae that the appellant/accused is a lady and she is a semi-literate and she is not even able to put her signature properly and, therefore, it is obligatory on the part of the Trial Court to verify as to whether the mandate under the above said provisions of the NDPS Act, have been complied with by the prosecution or not. But, unfortunately, the Trial Court as well as the learned counsel appearing for the appellant/accused therein have failed to discharge their duties properly and prays for interference.

10. This Court finds considerable force in the submission made by the learned Amicus Curiae. The prosecution has failed to produce any material to show as to the compliance of Section 42(2), 50 and 57 of NDPS Act and it is under mandate as per the provisions of the above said Act to comply with the same. The

appellant / accused, being a semi-literate, seems to have been given a wrong advice by the counsel appearing for her and she pleaded guilty to the charges framed against her. The Trial Court, before imposing the sentence, ought to have put the appellant / accused on notice as to the quantum of sentence, but it has failed to do so and has inflicted a severe sentence of four years rigorous imprisonment with the default sentence, though, finds, it is a small quantity.

11. In the absence of any materials placed by the prosecution, the conviction and sentence awarded by the Trial Court against the appellant / accused for the commission of the above said offence, in the considered opinion of the Court, warrants interference."

10. In the present case on hand also, the trial Court, based on mere oral submission pleading guilty, has imposed the sentence without any material. Admittedly, the charges are very serious in nature, which will invite punishment upto ten years, and therefore, the trial Court should have exercised the discretion legally, keeping in mind the rights guaranteed under Article 21 of the Constitution of India. How the discretion should be exercised by the Court has not been defined or no guidelines have been formulated by the legislature. In a grave crime like this, the trial Court, while exercising such discretion, should satisfy itself that the charges are plain unambiguous and understood by the appellant / accused properly. In this regard, in the judgment reported in (2016) 4 MLJ (Cr1) 378 (cited supra), it has been held as follows:

"20. The Hon'ble Supreme Court in State of Maharashtra v. Sukhdeo Singh, 1992 Cr1.L.J.3454 : LNIND 1992 SC 433, has held as follows:

"Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty, the Judge has to record the plea and thereafter decide whether or not to convict the accused. The

plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clean, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied, the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea, he must fix a date for the examination of the witnesses, ie., the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea, he must administer the same caution unto himself. This plea of guilt may also be put forward by the accused in his statement recorded under Section 313 of the Code."

These judgments have given sufficient guidelines as to how a judge should exercise his discretion under Section 229 of the new Code, when the accused pleads guilty. In the instant case, a perusal of the records, including the judgment of the trial Court, would reveal that the learned trial Judge had not explained to the accused, the ingredients of the offence and the other circumstances which may be relevant for deciding the quantum of sentence. In our considered view, the trial judge, in the instant case, ought not to have acted on the plea of guilty and instead, she ought to have proceeded with the trial of the case. As has been held by the Hon'ble Supreme Court, while the accused is questioned under Section 313 of Cr.P.C. his plea of guilty as recorded under Section 229 of the new Code shall also be put to him so that he could explain under what circumstances, he made such a plea and that may also be one of the circumstances to be taken into account by the court while deciding the issue whether the accused had committed the offence charged or not. In simple terms, we regret to say that the learned trial Judge, in the

instant case, had exercised her discretion not judiciously, but, unconstitutionally in an arbitrary manner."

11. In view of the above settled principle and also taking note of the submission of the learned counsel for the appellant / accused that the quantum of sentence was not put forth before the appellant / accused, this Court is of the view that the trial Court has mechanically imposed the conviction, and thus, the fair trial procedure has not been followed. When there is a violation of the fair trial contemplated under Article 21 of the Constitution of India, one cannot be deprived of life and personal liberty mechanically. In the above context, the judgment of the trial Court suffers legally and the same is liable to be set aside and the matter has to be remitted back to the trial Court for retrial and for examination of witnesses.

12. In the result, this Criminal Appeal is allowed and the judgment of conviction and sentence passed by the Special Judge for EC/NDPS Act Cases, Salem, in Spl.C.C.No.6 of 2021, dated 26.02.2021, is set aside and the matter is remitted back to the trial Court for retrial. The learned trial Judge is directed to examine all the witnesses afresh and conduct a fresh trial after giving opportunity to all the parties concerned and decide the matter on merits and pass appropriate orders. Consequently, connected miscellaneous petition is closed.

13. The appellant / accused is acquitted of the charges levelled against him. Fine amount, if any paid by the appellant/accused, shall be refunded. The appellant / accused is directed to be set at liberty forthwith, if he is not required for detention in connection with any other case. Though the appellant/accused is acquitted now, he shall appear before the trial Court as and when summons are issued by the trial Court.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

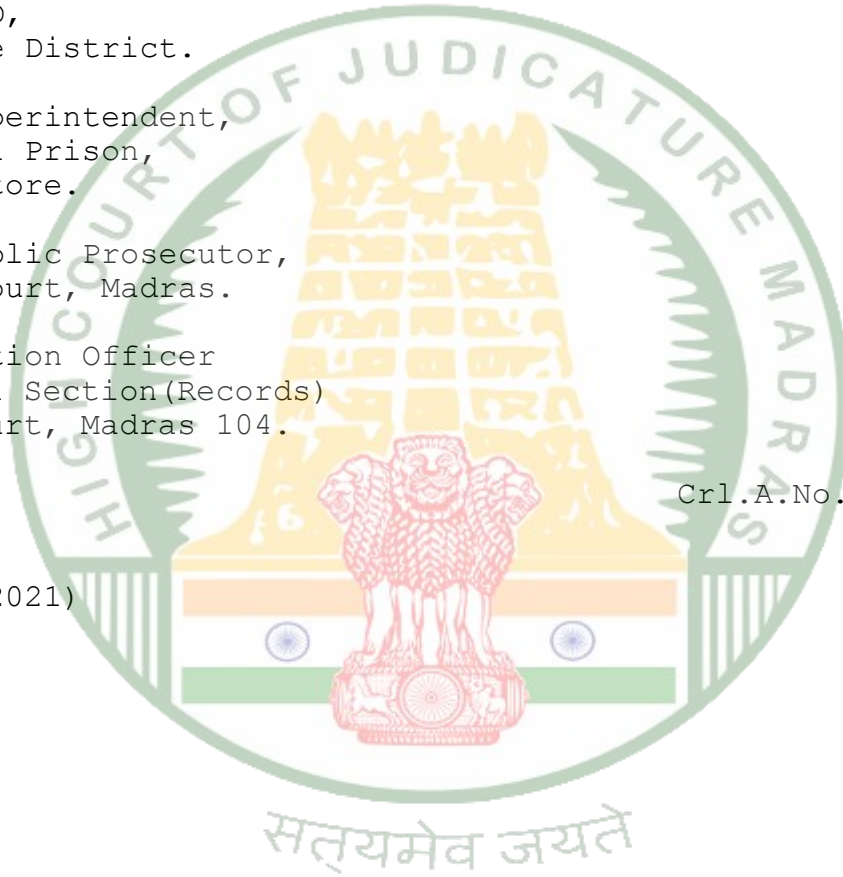
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To

1. The Special Judge,
Special Court for EC/NDPS Act Cases,
Salem.
- 2.The Judicial Magistrate No.II
Tirupattur
3. The Inspector of Police,
NIB-CID,
Vellore District.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Public Prosecutor,
High Court, Madras.
- 6.The Section Officer
Criminal Section(Records)
High Court, Madras 104.

SSN(CO)
SP(14/06/2021)

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