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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2021

PRONOUNCED ON : 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.378 of 2014

Intelligence officer,
Directorate of Revenue Intelligence
Chennai.

...Appellant/Complainant

Vs.

1.K.Karthik
2.S.Raja
3.S.Tamilarasan

...Respondent/Accused

Prayer: This Criminal Appeal has been filed under Section 377 (2) of Cr.P.C., against the judgment passed in C.C.No.11 of 2012 in RR.No.01 of 2012, by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai - 104, dated 26.02.2014 on the sentence imposed under Section 9A read with Section 25(A) and 29 of the NDPS Act, 1985 not in commensuration with the gravity of the offence and in spirit of the sentence stipulated under Section 25(A) and 29 of NDPS Act, 1985, for the offence committed by the respondents/accused herein.

For Appellant : Mr.N.P.Kumar
Special Public Prosecutor
for Central Government

For Respondent : Mr.H.Maruthiraj
Legal Aid Counsel

JUDGMENT

The appellant herein is the Intelligence Officer, Directorate of Revenue Intelligence.

2.This Criminal Appeal has been filed against the judgment passed in C.C.No.11 of 2012 in RR.No.01 of 2012, by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, dated 26.02.2014, on the sentence imposed under Section 9A read with Section 25(A) and 29 of the NDPS Act, 1985 not in commensuration with the gravity of the offence and in spirit of the sentence stipulated under Section 25A and 29 of NDPS Act,



1985 for the offence committed by the respondent/accused.

3. For the sake of convenience the parties are referred to as per the ranking before the Trial Court.

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4(a). The Intelligence Officer, Directorate of Revenue Intelligence, Chennai, has filed a complaint against all the three accused by alleging that one Sanjan Rao Shinde received an information that the accused herein had collected Ephedrine Hydro Chloride from Mumbai and would reach Chennai. The information was placed before Selvarajan, Senior Intelligence Officer, DRI, who permitted Sajan Rao Shinde and other officer to take action on the basis of the information. The Intelligence Officer along with the team of the officers intercepted the accused and recovered 25 Kgs of Ephedrine Hydro Chloride after duly complying with the procedures as prescribed under Sections 42, 50 and 52 of NDPS Act. All the three accused were summoned by DRI, there they gave voluntary statements, admitting their guilt and transportation of 25 kgs of Ephedrine Hydro Chloride. The Intelligence Officer of DRI, after collecting other particulars, necessary to prove the transportation of the case has filed complaint.

4(b). The case on file under Section 36(A) (d) of NDPS Act.

4(c). The charges were framed under Section 9(A) r/w. 25(A) of the NDPS Act and 9(A) read with Section 29 of NDPS Act against all the three accused.

4(d). To substantiate the charges against the accused on behalf of the complainant PW1 to PW7 were examined and marked Exs.P1 to P57 along with MO.1 to MO.5.

4(e). On 27.01.2014, when the matter posted for further examination of the prosecution witness, it appears from the records that all the three accused filed a memo admitted their guilt and pleaded guilty.

4(f). After the trial, the accused Nos.1 to 3 were convicted for the offence under Section 9(A) read with Section 25(A) and 29 of NDPS Act and sentenced them to undergo two months rigorous imprisonment and pay a fine of Rs.1,00,000/- for each, in default to pay the fine amount, the accused have to undergo further Rigorous Imprisonment for a period of one month. The period of sentence already undergone by the accused in this case, as remand prisoners is ordered to be set off under Section 428 of Cr.P.C. Aggrieved against the sentence imposed on the accused, the complainant has filed this Criminal Appeal before this Court for enhance of sentence.

5. Heard Mr.N.P.Kumar, learned Special Public Prosecutor for



Central Government, appearing for the appellant and Mr.H.Maruthiraj, legal aid counsel for the respondents and perused the materials placed on record.

6.Despite several adjournments given the advocate on record Mr.R.C.Paul Kanagaraj has reported that he has no instructions from his client. Since it is an appeal for enhancement of sentence, legal aid advocate was appointed on behalf of the accused.

7.Mr.N.P.Kumar, learned Special Public Prosecutor for the Central Government appearing for the appellant would contend that the Ephedrine Hydro Chloride is a 'controlled substance' and possession and transportation of the same is punishable under Section 9(A) read with Section 25(A) of the NDPS Act. The Government of India notified Ephedrine Hydro Chloride as a controlled substance based on the basis of material placed before the Government. As the above material could be used for the manufacturing of Narcotic Drugs and Psychotropic Substances. Further, he would submit that the maximum punishment prescribed for the offence is up to 10 years and fine can be imposed upto Rs.1,00,000/-.

8.The legal aid advocate appointed for the accused would submit that all the accused are the first time offenders and they have engaged to transport Ephedrine Hydro Chloride. Further, he would submit that no material collected or found in this case to implicate the accused with the manufacturing, purchasing and using of the controlled substance recovered in this case. Further, he would submit that the accused were lured to transport Ephedrine Hydro Chloride, and hence to plead to show leniency.

9.After, hearing rival submissions and also perusing the records, the specific case of the complainant is that the accused herein had transported controlled substance from Mumbai to Chennai, as such the accused could be found guilty only for transportation and abetting of the offence under NDPS Act. Hence, this Court finds the accused found guilty for the offence under section offences under Sections 25(A) and 29 of the NDPS Act.

10.After perusing the order passed by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, it is seen that the learned Sessions Judge has taken the view that "the accused are young offenders aged between 22 to 25 years. The accused are first time offenders, there is no material available or circumstances placed to impose the maximum sentence." and accordingly, imposed the sentence as stated supra.



11. After going through the order passed by the learned Sessions Judge, I find that at paragraph No.9 of the judgment the learned Judge has held that the accused herein were found guilty for transportation of Ephedrine Hydrochloride, a controlled substance under Section 9 of NDPS Act 1985 and abetting of the offence as mentioned under Sections 25A and 29 of the NDPS Act, 1985 and has imposed two months rigorous imprisonment on all the accused and to pay a fine of Rs.1,00,000/- (Rupees One lakh only) each and in default payment of the fine amount to undergo one month rigorous imprisonment. Further, this Court finds that the sentence of two months rigorous imprisonment and fine of Rs.1,00,000/-, imposed on each accused under Section 25A and 29 of NDPS Act, 1985 is too low.

12. Admittedly, the sentence awarded by the Sessions Judge for the offence under Section 25(A) and 29 of the NDPS Act, they are interconnected. Sentence for the offence under Section 29 of NDPS Act is liable to be imposed with respect to the offence committed as stated in the Act. Follows thereby, the sentence as stipulated under Section 25(A) of Cr.P.C is liable to be imposed.

13. Taking into consideration the quantity involved and other reasons assigned by the learned Sessions Judge that the accused are all first offenders and it is only controlled substance, I find that pursuant to the order passed by the learned Sessions Judge that the accused were released from the jail a decade ago and even the advocate could not contact them and hence, in the interest of justice the fine of Rs.1,00,000/- imposed by the learned Sessions Judge is enhanced into Rs.3,00,000/- on each accused. Already a sum of Rs.1,00,000/- has been paid and hence, the balance of Rs.2,00,000/- has to be paid by the accused persons within a period of one month from the date of receipt of a copy of this order, in default of which, they have to undergo further rigorous imprisonment for a period of four months.

14. With these observations, the Criminal Appeal is partly allowed to the limited extent as indicated above in respect of enhancement of fine only.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To:

1. The Special Judge,
II Additional Special Court under NDPS Act, Chennai.

2. The Public Prosecutor,
High Court, Madras.

3. The Special Public Prosecutor for Central Government,
Chennai.

+1cc to Mr.H.Maruthiraj, Advocate, S.R.No.55586

Crl.A.No.378 of 2014

GPL (CO)
RGA (12/11/2021)