



BAIL SLIP

Jayakumar S/o.Sethuraja, aged about 40 (2015), Accused was released on Bail Vide order of this court in M.P(MD)No.2032 of 2016 in Crl.A(MD)No.338 of 2015, Dated.22.03.2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A(MD)No.338 of 2015

Jayakumar : Appellant/Accused

Vs.

State: Represented by
Inspector of Police-NIB-CID,
Crime No.79 of 2005,
Madurai District.

: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence, dated 21.09.2015 in C.C.No.45 of 2006 on the file of the Principal Additional Special Judge for NDPS Act Cases, Madurai and acquit the appellant.

For appellant : Mr.S.Muthumalai Raja
for Mr.R.John Sathyan

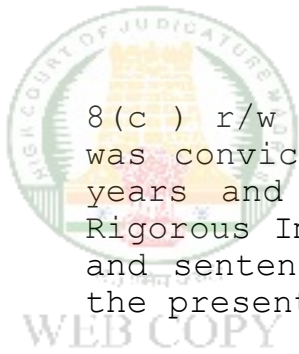
For Respondent : Mr.M.Muthumanikkam
Counsel for Government of
Tamil Nadu (Crl.side)

JUDGMENT

The present appeal is directed against the conviction and sentence, dated 21.09.2015, made in C.C.No.45 of 2006, on the file of the Principal Additional Special Judge for NDPS Act Cases, Madurai.

2. The appellant is the sole accused. He stood charged for the offences punishable under Sections 8(c) r/w 18(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "NDPS Act"). The accused denied the charges as false and opted for trial. Therefore, he was put on trial on the charges.

3. After full-fledged trial, the learned Principal Additional Special Judge for NDPS Act Cases, Madurai, came to the conclusion that the appellant was found guilty for the offences under Sections



8(c) r/w Section 18(c) of NDPS Act and accordingly, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for 12 months. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

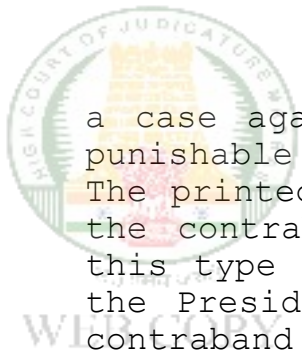
4. The relevant facts of the case, which gave rise to the filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i) P.W.4-R.Yogamurali, the then Head Constable, NIB-CID, Madurai, on 02.08.2005, around 05.00 a.m., received an information in respect to the transportation of the Opium. He recorded the said information in a General Diary and informed the same to the Inspector of Police. After getting the advise from the Inspector of Police, he along with P.W.3-Ravi and one Govindaraj, the then Head Constable, reached the occurrence place. Around 06.30 a.m., on information given by the informant, they have secured the accused and informed that they are the Police Officers. The accused was duly informed about the right having by him in respect of the search overcome. For which, the accused refused to utilize the right having by him, further, he has given the consent to P.W.4 for conducting search. After giving consent letter under Ex.P.6, the accused on his own accord produced the Rexin Blue Colour checked Bag to the police for search and it contains 1.600 Kilo Grams of Opium and the accused gave a confession statement stating that he has to go to Rameswaram, which was recorded in the presence of police witnesses.

(ii) On verification, it was found that the possession of contraband by the accused is having a character of Opium. Immediately, after the search, P.W.4 by using the scale weighed the contraband and found that the weight of the contraband is about 1.600 Kilo Grams. He collected 10 grams of Opium in two pockets for chemical examination (Totally 20 grams). The samples of the contraband were sealed by following the procedure and named as S1 & S2. Further, he had affixed the label to the remaining contraband. P.W.4 prepared Ex.P.4-Seizure Mahazar and through which, he recovered the contraband along with Rs.170/-. He prepared a Arrest Memo under Section 52 of NDPS Act. Further, under Section 57 of the NDPS Act, he prepared a detailed report.

(iii) Consequently, along with the accused and the contraband, he reached the police Station and submitted the detailed report to P.W.5-Thambidurai for initiating action against the accused/appellant in respect to the possession of Opium.

(iv) P.W.5-Thambidurai, the then Inspector of Police, NIB-CID, on 02.08.2005 around 9.00 a.m., received the detailed report from P.W.4 and the recovered materials. Thereafter, he registered



a case against the accused in Cr.No.79 of 20015 for the offences punishable under Sections 8(c) r/w Section 18 (c) of NDPS Act. The printed FIR has been marked as Ex.P9. Vide Form-95, he produced the contraband to the Court, which is having jurisdiction to try this type of offence. Under Ex.P1, he submitted an application to the Presiding Officer of the Court with a request to forward the contraband for chemical examination. On considering the request of P.W.5, the Court issued a letter, dated 02.08.2005 to the Chemical examination for chemically examining the samples, which were recovered during the time of search.

(v) On receipt of the said reference, P.W.1-Banumathi, the Scientific Officer attached with Forensic Science Department, Chennai received the sample contraband and on examination, she found the contents of the sample as Opium. In this regard, she issued a report under Ex.P3.

(vi) In continuation of the investigation, P.W.4 examined the Scientific Assistant and recorded his statement. Finally, he came to a positive conclusion that the accused herein committed the offence punishable under Section 8(c) r/w Section 18(c) of NDPS Act and filed a final report accordingly.

5. Based on the above materials, the trial Court framed the charges against the accused under Section 8(c) r/w Section 18(c) of NDPS Act. The accused denied the charges and opted for trial. Therefore, he was put on trial.

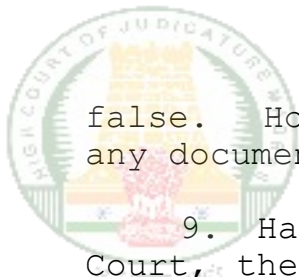
6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 5 witnesses have been examined as PW1 to PW5 and 9 documents were exhibited as Ex.P1 to Ex.P9, besides, two Material Objects [M.O.1 and M.O.2].

7. Out of the said witnesses, P.W.1-the Assistant of the Forensic Science Department speaks about the details of chemical examination conducted over the sample contraband, which is forwarded from the Court.

(i) P.W.2-Mahalakshmi, the then Head Clerk of the Special District and Sessions Court for NDPS Act Cases claims that on 02.08.2005 she received the recovered contraband and assigned with serial number as RPR No.1131/2005. She has further stated that on the same day, the contraband was forwarded to the Forensic Science Department with a request for chemically examine the same.

(ii) P.Ws.3 to 5 are the Police Officers, speaks about the receipt of information, details of search made on the accused, recovery of contraband and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as



false. However, he did not chose to examine any witness nor mark any document on his side.

9. Having considered the materials placed before the trial Court, the learned Principal Additional Special Judge for NDPS Act Cases, Madurai came to the conclusion that the accused was found guilty for the offence under Section 8(c) r/w 18(c) of NDPS Act and sentenced him as stated above. Aggrieved by the said conviction and sentence, the appellant is before this Court with this appeal.

10. I have heard Mr.S.Muthumalai Raja, learned counsel appearing for the appellant and Mr.M.Muthumanikkam, Counsel for the Government of Tamil Nadu. I have also perused the records carefully.

11. The first and foremost contention raised by the learned counsel appearing for the appellant in this appeal is that, while at the time of collecting the samples from the recovered contraband, the police officer, who investigate the case, has not followed the circular issued in this regard. Therefore, lapse found on the part of the prosecution is a best ground for acquitting the accused.

12. In order to substantiate his contention, he relied on the judgment of our Hon'ble Apex Court in ***Union of India vs. Bal Mukund and others*** reported in ***(2009) 12 Supreme Court Cases 161***. In otherwise, in respect to the mandatory requirements, which has to be followed under Sections 42, 50 and 57 of NDPS Act, he would consider that everything is in proper.

13. In the said circumstances, by considering the said submission with relevant records, it is apparent, while at the time of giving evidence as P.W.4 the Recovery Officer has duly stated that only 10 grams of contraband was taken from the total contraband and thereafter, the samples have been sealed in accordance with the rule already formulated. The Scientific Officer, who examined the sample contraband, has also stated in his evidence as while at the time of receiving the sample Opium, the same is having total weight of 9.200 grams. In the said situation, it is relevant to see the Standing Order No.1/89, dated 13.06.1989, which had been issued under the Act lays down the procedure for taking samples. As per the instructions, as far as Opium is concerned, minimum quantity that has to be taken as a sample is 24 grams of Opium in each bag. That minimum grams of Opium are required for conducting the test. But, in this case, admittedly, the Investigating Officer has taken only 20 grams of the sample. Hence, an insufficient quantity of sample was taken for conducting the test, which creates a doubt about the entire case of the prosecution.

14. In this regard, in the case of ***The Union of India vs. Bal Mukund and others*** reported in ***(2009) 12 Supreme Court Cases 161***,

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which relied on by the learned counsel appearing for the appellant, our Hon'ble Apex Court, in Paragraph 36, held as follows:-

"36. There is another aspect of the matter which cannot also be lost sight of. Standing Instruction 1/88, which had been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that P.W.7 had taken samples of 25 gm each from all the five bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement in law."

Therefore, applying the ratio laid down in the above referred judgment, herein also, the Investigating Officer has not followed the due procedure of law. Therefore, that alone is sufficient to held that the prosecution has failed to prove the case beyond reasonable doubt.

15. Accordingly, in the light of the above discussions stated supra, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant, by the learned Principal Additional Special Judge for NDPS Act Cases, Madurai, made in C.C.No.45 of 2006, dated 21.09.2015, is set aside and the appellant is acquitted from all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Principal Additional Special Judge for NDPS Act Cases, Madurai.
2. The District Collector, Madurai.
3. The Director General of Police, Mylopore, Chennai.
4. The Superintendent, Central Prison, Madurai.



5. The Inspector of Police-NIB-CID,
Madurai District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Copy to:

The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.338 of 2015
10.08.2021

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