



Bail Slip

Mokkaithai, aged about 63 years, W/o.Perumal Petitioner/Sole Accused was directed to be released on bail vide order of the Court dated 10.06.2016 made in Crl.Mp(MD)3621 of 2016 in Crl.A(MD)141 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A. (MD)No.141 of 2016

Mokkaithai : Appellant/Sole Accused
Vs.

State rep by
The Inspector of Police,
NIB CID Wing,
Dindigul.
(In Crime No.137 of 2005)

: Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence passed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, in C.C.No.186 of 2008, dated 18.04.2016.

For Appellant : Mr.S.T.Sasidharan Tamilkani
Legal Aid Counsel

For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (Crl. side)

J U D G M E N T

The present appeal is directed against the conviction and sentence dated 18.04.2016, passed in C.C.No.186 of 2008, on the file of the learned I Additional Special Judge for NDPS Act cases, Madurai.

2. The appellant is the accused in C.C.No.186 of 2008. She stood charged for the offence punishable under Section 8(c) read with 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act [hereinafter referred to as 'the NDPS Act']. She denied the charge and opted for trial. After full-fledged trial, the Presiding Officer of the Special Court for NDPS Act cases found the accused guilty under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.8,000/-, in default, to undergo simple imprisonment for six months. Challenging the same, the accused is before this Court with this Criminal Appeal.



this appeal are necessary to be recapitulated for the disposal of this appeal.

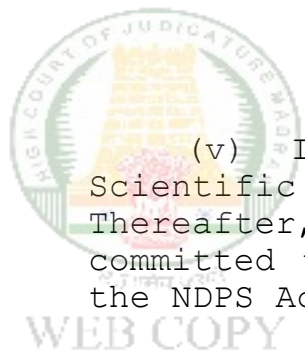
(i) On 24.09.2005, while P.W.4 - Nambinarayanan, who is the Head Constable, Palayamkottai Police Station, had been on duty in N.I.B.C.I.D., at Dindigul, received an intimation in respect of the movement of contraband and recorded the same in Ex.P.6. After recording the same before his superior officer, obtained permission for proceeding with further action.

(ii) After obtaining permission as above, along with P.W.3 - Rekha, PW4 reached the occurrence place and on 29.05.2005 around 07.15 a.m., upon the information given by the Informant, he secured the accused viz., Mekkathai and one Dharmaraj. After securing the accused as above, P.W.4 informed the accused the right guaranteed under Section 50 of the NDPS Act in respect of the search made before the learned Judicial Magistrate or before the Gazetted Officer. Since the accused did not want to exercise the right, the reply given by the accused had been recorded under Ex.P.4 [Consent letter] and thereafter, P.W.3 - Rekha, who is the woman Head Constable, searched the accused and found that the accused had been in possession of 2.5 K.Gs. of Ganja. After seeing as above, both P.W.3 and P.W.4 took 250 Gms. of sample and sealed the remaining contraband. The Mahazar, which was prepared for recovery of contraband, was marked as Ex.P.5.

(iii) After completing the above formalities, P.W.4 along with accused arrived at the Police Station and registered a case against the accused in Crime Nos.137 and 138 of 2005 under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act. After registration of the case, he handed over the case records to P.W.5 - Veeramani along with recovered contraband for further investigation.

(iv) P.W.5 - Veeramani, the then Inspector of Police, N.B.I.C.I.D., Sivagangai, on receipt of the F.I.R., took up the same for investigation. He examined the accused and through Form-95, he produced the contraband before the Court and sent requisition for chemical examination of the contraband.

(v) P.W.2 - Krishnamoorthy, the then Sheristadar of the Judicial Magistrate Court, Madurai, on 30.09.2005, received the contraband and assigned R.P.R.No.1451 of 2005 and thereafter, in view of the request given by P.W.5, forwarded the sample to the Chemical Examiner and then P.W.1 - R.Meenakshi, Scientific Assistant, Forensic Science Department, Madurai, on 30.09.2005 received the contraband along with the requisition under Ex.P.2. On examination, she found that the sample contraband contains cannabinoids (Ganja). In this regard, she issued report under Ex.P.3.



(v) In continuation of investigation, P.W.5 examined the Scientific Examiner, the Head Clerk and recorded their statements. Thereafter, he came to the positive conclusion that the accused had committed the offence under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act and filed final report accordingly.

4. Based on the above materials, the learned Trial Judge framed the charge under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act. The accused denied the same as false and opted for trial. In order to prove their case, on the side of prosecution, five witnesses have been examined as P.W.1 to P.W.5 and 8 documents were marked as Exs.P.1 to P.8, besides 3 Material Objects [M.O.1 to M.O.3].

5. Out of the said witnesses, P.W.1 - Meenakshi, the Scientific Assistant attached with the Forensic Science Department, Madurai, speaks about the receipt of samples and about the examination made. According to her, the samples received for chemical examination is cannabinoids. P.W.2 - Krishnamoorthy claims that while he was working as Sheristadar in the Chief Judicial Magistrate Court, Madurai, received the contraband and after getting permission from the Presiding Officer of the Court, issued the proceedings to the Chemical Examiner for examining the contraband.

6. P.W.3 to P.W.5, who are the Police Officers, speak about the receipt of information from the Informant, reaching the occurrence place, securing the accused, preparing the samples from the contraband and filing of final report.

7. In respect of incriminating materials available as above, the accused was examined under Section 313 Cr.P.C., for which, the accused denied the same as false. However, she did not choose to examine any witness or mark any document on her side.

8. Heard Mr.S.T.Sasidharan Tamilkani, learned counsel appearing for the appellant and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Criminal side) appearing for the State and perused the materials available on record.

9. The learned counsel appearing for the appellant submitted that in respect of the date on which the alleged contraband was secured from the accused, the witnesses examined on the side of prosecution gave inconsistent evidence and therefore, it cannot be held that the alleged occurrence had happened as alleged by the prosecution. He further submitted that since the alleged occurrence had happened in the public place, it is necessary for the prosecution to prove their case by examining the independent witnesses, but in the present case, in order to establish the recovery from the accused, except the Police Officers, none have been examined. He further added that after recovery of the



contraband, the same has been produced before the trial Court after six days from the date of recovery. In this regard, the Investigation Officer while at the time of giving evidence as P.W.5 had admitted that there is no document available to show the possession of the contraband from the date of recovery till the date on which the same was produced before the trial Court.

10. By submitting as above, the learned counsel appearing for the appellant prayed to allow this appeal and set aside the conviction and sentence.

11. Per contra, the learned Government Advocate (Criminal side) appearing for the State contended that the lapses now indicated by the learned counsel appearing for the appellant would not affect the case of the prosecution in entirety. On the date of recovery itself, the contraband has been produced before the Judicial Magistrate Court. Thereafter, due to the reason that the contraband was returned by the learned Judicial Magistrate, it was kept in the Police Station and therefore, it cannot be said that the Investigation Officer has overruled the mandatory procedures, which required for proving the offence alleged to be committed by the accused.

12. By considering the said submissions, now, on going through the evidence given by P.W.3, who alleged to be the witness for recovery, has stated in her evidence as the search was conducted on 25.09.2005 at 06.00 a.m. On the other hand, P.W.4, who is one of the Police Officers recovered the contraband from the accused, has stated in his evidence as on 24.09.2005 while he was working as Head Constable, N.I.B.C.I.D., Dindigul, received an information under Ex.P.6 and thereafter, he obtained permission from the Superior Officers for conducting raid. Now, on going through the said Ex.P.6, it seems that he has received information on 24.09.2005 and afterwards, he prepared a Mahazar on the same day at 08.15 a.m., for the recovery of contraband. Therefore, a conjoint reading of the evidence given by P.W.3 with the date found in the documents, i.e., Exs.P.5 and P.6, reveal the fact that in respect of the date of recovery, P.W.3 gave a false evidence. Therefore, the evidence given by P.W.3 in respect of the date of occurrence would not affect the case of the prosecution in any way. Therefore, the first submission made by the learned counsel appearing for the appellant in respect of the date of occurrence is not having any much force.

13. In respect of the second submission made by the learned counsel appearing for the appellant, it is true, before the trial Court in order to prove their case, on the side of the prosecution, except the Police Officers and the Officers, who attached with the Court and Forensic Science Department, none have been examined. In the said circumstances, in respect of the occurrence place, P.W.4 has stated in his cross-examination as he secured the accused in the



Bus Stand. Therefore, it is easy for them to request the public to stand as a witness for recovery of contraband. But, in this regard, the whole evidence given by P.W.4 reveals the fact that he has not requested the public to stand as a witness. However, in similar situation, in the case of **Surinder Kumar Vs. State of Punjab** reported in **2020 (2) SCC 563**, our Hon'ble Apex Court has held as follows:-

''15.The judgment in Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2011) 3 SCC 521 : (2011) 1 SCC (Cri) 1191], relied on by the counsel for the respondent State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.''

Therefore, applying the ratio laid down in Paragraph 15 of the above referred judgment in the case on hand also, though P.W.4 has not given any evidence in respect of the request made before the public for standing as a witness, the same alone is not sufficient to discard the evidence given by P.W.3 and P.W.4. Therefore, I am of the opinion that non-examination of independent witness alone is not sufficient to hold that the entire story put forth by the prosecution is a false one.

14. The next submission of the appellant's counsel is that before proceeding for search, the information received by P.W.4 has not been recorded and therefore, the said act committed by P.W.4 is violative of Section 42 of the NDPS Act and hence, on that score alone, the accused is entitled to the relief of acquittal.

15. In this aspect, on going through the evidence given by P.W.4, who has received the information, has stated in his chief-examination as on 24.09.2005 while he had been working as Head Constable in N.I.B.C.I.D. at Dindigul, received an information from the Informant and thereafter, after recording the same, the same has been placed before the Inspector of Police and permission was obtained. In order to substantiate the same, he has produced the information received by him and the permission granted by the Superior Officer as Ex.P.6.

16. Though the said evidence is available in terms of Section 42 of the NDPS Act, in his cross-examination, he has stated that at the time of receipt of information, the Inspector of Police was not available in the Police Station. He has further stated that the information received by him is not recorded in the G.D. file.



Further, his evidence is made clear that he had received the information at 06.00 a.m. and reached the occurrence place at 06.30 a.m. Therefore, it is obvious that during the time when he received the information, the person, who granted permission, is not available in the Police Station and the said circumstance creates a doubt whether he has obtained permission from the superior officers before proceeding for search, more than that, in Ex.P.6, which was preferred in terms of Section 42 of the NDPS Act, it seems that somebody signed on behalf of the Inspector of Police. In this regard, the prosecution has not laid clear evidence as to when the said document has been prepared. Therefore, in respect of preparation of Ex.P.4, the evidence given by P.W.4 creates a doubt whether Section 42 of NDPS Act has been complied with as per the requirement of the said Section. Further, it is admitted fact that after recovering the contraband on 24.09.2005, the same has been produced before the learned Judicial Magistrate on 26.09.2005. Subsequent to that, only on 30.09.2005, the same has been produced before the trial Court. In respect of possession of contraband for the period between 26.09.2005 and 30.09.2005, P.W.5 gave evidence as he has not having any document to show under whose possession the contraband was available from 26.09.2005 to 30.09.2005, which shows that the prosecution has failed to prove the fact that the contraband was available from the custody of the particular person. Accordingly, the Investigation Officer violated Section 55 of the NDPS Act. Furthermore, in the Mahazar prepared by P.W.4, there is no endorsement to show that the property was produced before the learned Magistrate immediately on 26.09.2005 itself. Therefore, in contravention of Sections 42 and 55 of the NDPS Act, I am of the opinion that the prosecution failed to prove its case beyond reasonable doubt and therefore, it is a fit case for ordering acquittal.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence dated 18.04.2016, imposed in C.C.No.186 of 2008, by the learned I Additional Special Judge for NDPS Act Cases, Madurai, is set aside and the appellant is acquitted from the charges. The fine amount, if any, paid by her shall be refunded to her. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1.The I Additional Special Judge for NDPS Act Cases,
Madurai.

2.The Inspector of Police,
NIB CID Wing,
Dindigul.

3.The Superintendent,spl Prison for women, Madurai.

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.

+1 CC to M/s.S.T.SASIDHARAN TAMILKANI, Advocate (SR-25687[F] dated
09/08/2021)

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09.08.2021

RD(1.09.2021) 7P 8C