



Bail Slip

Easwaran, S/O Duraichamy Thevar, Male, aged about 52(2016), was released on Bail, as per order of this Court dated 10.01.2017, in Crl.MP(MD)No.6703 of 2016 in Crl.A(MD)No.286 of 2016.

Kasimayan, S/O Thoppusamy, Male, aged about 52(2016), was released on Bail, as per order of this Court dated 11.08.2016, in Crl.MP(MD)No.4755 of 2016 in Crl.A(MD)No.216 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2021

DELIVERED ON : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A. (MD)Nos.286 & 216 of 2016

Crl. A.(MD).No.286 of 2016

Easwaran
S/o.Duraichamy Thevar ... Appellant/Accused No.1
-vs-

State Rep. by
The Inspector of Police,
Kumuli Police Station,
Theni District. ... Respondent

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records in C.C.No.139 of 2012 relating to the judgment dated 07.06.2016 passed by the Second Additional District Judge, Special Court for NDPS Act Cases, Madurai and to set aside the judgment of conviction on the Appellants/Accused.

Crl. A.(MD).No.216 of 2016

Kasimayan
S/o. Thoppusamy ... Appellant/Accused No.2
-vs-

State Rep. by
The Inspector of Police,
Kumuli Police Station,
Theni District. ... Respondent in both Crl.A

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records in C.C.No.139 of 2012 relating to the judgment dated 07.06.2016 passed by the learned Second Additional District Judge, Special Court for NDPS Act Cases, Madurai and to set aside the judgment of the conviction on the Appellants/Accused.



For Appellants : Mr.S.T.Sasidharan Tamil Kani
for Crl.A.(MD).No.286 of 2016

: Mr.S.Muniyandi
for Crl.A(MD).No.216 of 2016

For Respondents : Mr.T.Senthil Kumar
in both cases Government Advocate (Crl. Side)

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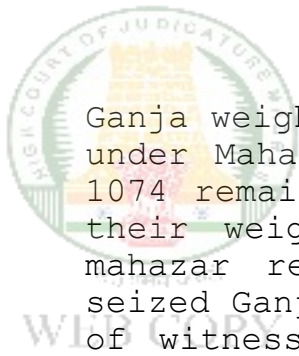
COMMON JUDGMENT

The First Accused/Eswaran filed Crl.A.(MD) No.286 of 2016 and the Second Accused/Kasimayan filed Crl.A.(MD) No.216 of 2016 against the judgment of conviction and order of sentence passed in C.C.No.139 of 2021 on the file of the learned II Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai.

2.Since both the appeals arise out of the judgment of the learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai, the appeals are taken up together for disposal.

3.The brief facts, which are relevant for consideration in the appeals as per the case of the prosecution, are as follows:

3.1.The Sub Inspector of Police, Kumuli Police Station, on receipt of information that narcotic substance being transported towards Kerala had recorded the information and gave a report to the Inspector of Police, Narcotics Investigation Bureau, Theni District and with his permission, proceeded to the place of occurrence along with Head Constable Nos.1011 and 1074. On reaching Tamil Nadu State Transport Corporation Depot at Kumily, they found two persons moving in a suspicious manner with head load containing yellow colour bag. On seeing the Sub Inspector of Police, Kumily, they ran away to escape from being arrested by the Sub Inspector of Police, Kumily Police Station and in the process, they fell down and injured themselves. On seeing the suspicious persons running, the police chased and caught them and on their search, the Sub Inspector of Police, Kumily Police Station, they found in possession of Ganja and seized the same and also arrested the Appellants/Accused 1 and 2. The Sub Inspector of Police and his men Head Constable Nos.1011 and 1074. The Sub Inspector of Police, Kumily and his men, Head Constable Nos.1011 and 1074 had informed the Appellants/Accused 1 and 2 about their right to be searched in the presence of a Gazetted Officer. The Appellants/Accused 1 and 2 stated that they did not insist for search before the learned Judicial Magistrate or Gazetted Officer. Therefore, the search was conducted by the Sub Inspector of Police and his men. On recovery of substance, it is found to be

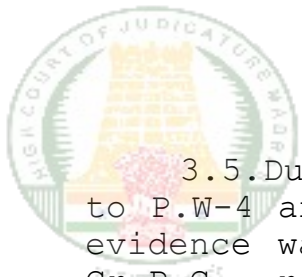


Ganja weighing 8 kgs. It was recovered in the presence of witnesses under Mahazar Ex.P-1 and Ex.P-2. The Head Constables Nos.1011 and 1074 remained as witnesses for the weighing of Ganja and recording their weight and preparation of seizure mahazar and observation mahazar regarding place of occurrence. Samples taken from the seized Ganja, 50 grms were neatly packed and sealed in the presence of witnesses viz., Head Constables Nos.1011 and 1074 and in the presence of the Appellants/Accused. It was forwarded to the Court of the learned Second Additional District and Sessions Judge, Madurai with a requisition letter to forward the seized articles to the Tamil Nadu Forensic Laboratory for analysis and report regarding presence of the Narcotic Substances. The accused were produced before the Inspector of Police along with seized Ganja and confession statement also obtained from them regarding the same. Their arrest was recorded and along with the remand request, the Inspector of Police had forwarded the Appellants/Accused before the Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai along with Special Report under Ex.P10 and FIR under Ex.P-4 with copies of the same to the higher police officers and the original FIR and complaint was forwarded to the Special Judge along with remand request of the accused and requisition for sending the sample seized from the accused for Forensic Analysis.

3.2.The learned Judicial Magistrate had remanded the accused. On receipt of the requisition from the Investigation Officer, the learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai had addressed the Forensic Department along with the requisition letter for analysing the seized Ganja.

3.3.The samples were sent to the Forensic Department through Head Constables Nos.1011 and 1074. After receipt of the report from the Forensic Department, the Investigation Officer had obtained statement of witnesses and completed the investigation. The final report of the investigation was laid before the Court of the learned Second Additional District and Sessions Judge, Special Court for NDPS Act cases, Madurai.

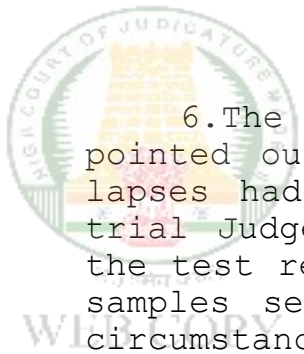
3.4.The learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai, had taken cognizance of the offence under Sections 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act, 1985 and summons were sent to the Appellants/Accused. On appearance of the Appellants/Accused, charges were framed under Sections 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act, 1985. The Appellants/Accused denied the charges and claimed to be tried. Therefore, trial was ordered by the learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases.



3.5. During trial, the prosecution had examined witnesses P.W-1 to P.W-4 and marked documents Ex.P-1 to Ex.P-10. After prosecution evidence was closed, the accused was examined under Section 313 of Cr.P.C., regarding the incriminating evidence available through the witnesses P.W-1 to P.W-4 and documents Ex.P-1 to Ex.P-10 against them. The Appellants/Accused 1 and 2 denied the incriminating evidence against them. After completion of proceedings under Section 313 of Cr.P.C., the accused had not examined any witness as defence witness. After hearing the arguments of the prosecution and the defence and on assessment of evidence, the learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai, had convicted the Appellants/Accused 1 and 2 under Sections 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act, 1985 and sentenced the Appellants/Accused to undergo rigorous imprisonment for five years and to pay fine of Rs.20,000/- each, in default, to undergo six months simple imprisonment. Aggrieved by the same, the Appellants/Accused had preferred these appeals.

4. Heard the learned counsel for the Appellants/Accused and the learned Government Advocate (Crl. Side) and perused the materials available on record.

5. The grounds of attack by the learned counsel for the Appellants/Accused is that when the officer who searched, caught and arrested the Appellants/Accused, had received the information regarding the transport of contraband. He had the discreet information and he had not furnished the details of the same to his superior officer as per the Provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 and obtained permission to conduct the raid. Therefore, the arrest, search, seizure and the resultant investigation and laying of final report by the Investigation Officer are against the Provisions of Narcotic Drugs and Psychotropic Substances Act, 1985. The raid conducted by P.W-2 on 02.03.2012 and after seizing the contraband, collection of roughly 100 gms of Ganja in two equal bags were sent to Forensic Department. But, as per the Report obtained from the Forensic Department, it did not weigh 100 gms and it weighed only 90 gms. Therefore, it is not as per the Provisions of Narcotics Drugs and Psychotropic Substances Act, 1985. Not only that, the Appellants/Accused had to be arrested on 02.03.2012 in the presence of independent witnesses including the Gazetted Officer or a Judicial Magistrate, the same was not followed in this case. Therefore, the conviction and sentence imposed on the Appellants/Accused by the learned II Additional District and Sessions Judge, Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, Madurai, is perverse and the same is to be set aside.

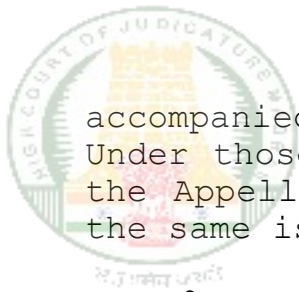


6.The learned Government Advocate (Crl. Side) had rightly pointed out that there are lapses in the investigation, but this lapses had not affected the conclusion arrived at by the learned trial Judge that the contraband seized from the Accused is Ganja, the test result from the Forensic Department also confirms that the samples sent to the Forensic Department was Ganja. Under those circumstances, the arguments of the learned counsel for the Appellants/Accused is to be rejected. The learned Sessions Judge had discussed the defence of the Appellants/Accused and had also disagreed with the arguments of the learned counsel for the Appellants/Accused stating that those defects are trivial in nature and not affecting the Prosecution case and confirmed the seized contraband as Ganja. Therefore, the appeals lack merits and the same had to be dismissed.

7. Point for consideration:

Whether the judgment of conviction and sentence of imprisonment imposed by the learned II Additional District and Sessions Judge, Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, Madurai, in C.C.No.139 of 2012, dated 07.06.2016 is to be set aside as perverse warranting interference by this Court as Appellate Court?

8. On perusal of the Judgment dated 07.06.2015 and the evidence of P.W-1 to P.W-4 and Ex.P-1 to Ex.P-10 and the arguments put forth by the Appellants/Accused does not gain weightage. It is to be observed that 100 gms is the minute quantity which is noted for sending to Forensic Department to verify the seized contraband is Ganja. Just because of 90 gms only was sent, it does not mean that less than 100 gms cannot be tested by the Forensic Department. Therefore, as rightly pointed by the learned Government Advocate (Crl. Side), the said arguments of the learned counsel for the Appellants/Accused is rejected. As there is already evidence that the sample of Ganja sent from the Court to the Forensic Department weighing about 90 gm or 100 gm, only a small portion was sent to the Forensic Department and the same has been wrapped and found as Ganja. The other argument that before proceeding to the place of occurrence, the Sub Inspector of Police had not given intimation and obtained permission from the Superior Officer viz., Inspector of Police or Deputy Superintendent of Police also cannot be accepted. Already, the learned trial Judge had discussed the same in his Judgment that on intimation received, the Sub Inspector of Police had proceeded to Tamil Nadu State Transport Corporation Depot at Kumily from where on seeing them, one of the Accused ran away. The other was present. When the Accused, who was caught red handed, was informed by the Sub Inspector of Police that he had the right to be searched and the seizure to be recorded in the presence of independent witnesses. He had declined stating that the raiding Official himself can search the Appellants/Accused. Therefore, the Accused No.1 was searched in the presence of Police Officials who



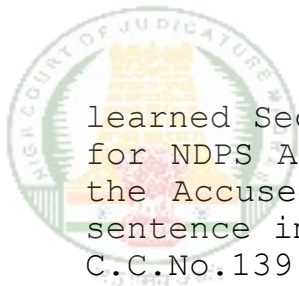
accompanied the Sub Inspector of Police to the place of occurrence. Under those circumstances, the arguments of the learned counsel for the Appellants/Accused does not find merit and acceptance. Hence, the same is rejected.

9. Further, on perusal of the entire materials available through P.W-1 to P.W-4 and the judgment of the learned trial Judge, it is found that the learned trial Judge had appreciated the evidence as per the Provisions of the Indian Evidence Act. When independent witnesses are not coming forward to remain as witness, then the Police Officials who accompanied the Sub Inspector of Police had remained as witness had to be accepted. If the arguments of the learned counsel for the Appellants/Accused is to be accepted, then in several cases particularly, Narcotic Drugs and Psychotropic Substances Act, the accused had to be acquitted which is against the rules laid down by the Hon'ble Supreme Court. In the light of the above discussions, the arguments of the learned counsel for the Appellants/Accused does not warrant interference. The Appellants/Accused, who had ran away on seeing the Sub Inspector of Police, could not have given statement regarding search and seizure. The other Accused, who was arrested, had confessed to the crime. Therefore, the argument of the learned counsel for the Appellants/Accused, who ran away from the place of occurrence, cannot be accepted. If it is to be accepted, then the accused in every Narcotic Drugs case had to be acquitted which is against the Provisions of Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, the arguments of the learned counsel for the Appellants/Accused is rejected.

10. In view of the above discussion, the point for consideration is answered in favour of the prosecution/respondent and against the appellants/accused. The judgment of conviction recorded by the learned II Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai in C.C.No.139 of 2012, dated 07.06.2016 is not perverse warranting interference by this Court.

In the result, both the Criminal Appeals are dismissed.

The Judgment of conviction recorded by the learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai in C.C.No.139 of 2012, dated 07.06.2016 is confirmed. The learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai, is directed to issue warrant against the Appellant/Accused No.1 to forward him to Prison to undergo the remaining period of sentence imposed on the Accused No.1 by judgment dated 07.06.2016 in C.C.No.139 of 2012. The period of detention already undergone by the Appellant/Accused No.1 from 02.03.2012 to 08.05.2012 is set off under Section 428 of Cr.P.C. Accused No.2, who ran away, had not been secured. Therefore, the



learned Second Additional District and Sessions Judge, Special Court for NDPS Act Cases, Madurai, is directed to issue warrant to secure the Accused No.2 to forward him to Prison to undergo the period of sentence imposed on the Accused No.2 by judgment dated 07.06.2016 in C.C.No.139 of 2012.

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Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

Srm/dh

To

- 1.The Second Additional District and Sessions Judge,
Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Kumuli Police Station,
Theni District.
- 3.The superintendent Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Record Keeper, Criminal Records,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

CRL.A.(MD)Nos.286 & 216 of 2016
23.12.2021

RD(03.02.2022) 7P 7C