



BAIL SLIP

Petchiammal aged about 35 years, W/o. Lakshmanan, Sole Accused was released on bail vide court order dated 16.02.2016 made in CRL.MP(MD).No. 1382 of 2016 in CRL.A(MD).No. 53 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A.(MD) No. 53 of 2016

Petchiammal : Appellant / Accused (Single)

Vs.

The State represented by
The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
(Crime No.1075 of 2010).

: Respondent / Complainant

PRAYER: The Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment rendered by the learned II-Additional Special Judge for NDPS Act Cases, Madurai, Madurai District in C.C.No.126 of 2013 vide his judgment dated 19.01.2016, and set aside the same and consequently acquit the appellant honorably.

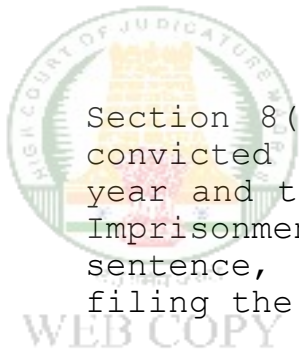
For Appellant : Mr.R.Anand

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.side)

JUDGMENT

The present Criminal Appeal is directed against the conviction and sentence, dated 19.01.2016, made in C.C.No.126 of 2013, on the file of the learned II-Additional Special Court, NDPS Act Cases, Madurai.

2.The appellant is the sole accused. She stood charged for an offence punishable under Section 8(c) r/w 20(b)(2)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "NDPS Act"). After full-fledged trial, the learned II-Additional Special Judge, NDPS Act Cases, Madurai, came to the conclusion that the appellant was found guilty for an offence punishable under



Section 8(c) r/w 20(b) (2) (B) of NDPS Act and accordingly, she was convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for 3 months. Challenging the said conviction and sentence, the appellant/accused is before this Court, by way of filing the present Criminal Appeal.

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

(i) On 29.11.2010 around 9.00 a.m., P.W.4-Latha, the then Sub-Inspector of Police, Kovilpatti West Police Station, Thoothukudi District, received an information from the informer about the possession of ganja by the accused. Immediately, after receipt of the said information, P.W.4 reduced into writing (Ex.P1) and forwarded the same to the Inspector of Police. After getting prior permission from her Superior Officer, she along with P.W.2-Manimegala, who is the Women Head Constable working in the same station, went to the Ilaiyarasanenthal Road, Kovilpatti, wherein, after introducing herself to the accused, P.W.4 informed that she wanted to conduct the search over her.

(ii) In this regard, P.W.4 explained the right, which is available under Section 50(1) of NDPS Act. In this regard, the accused refused to exercise the right and permitted P.W.4 to conduct the search over her. In this regard, the consent letter has been obtained from the accused and the same has been marked as Ex.P.2.

(iii) During the time of search, P.W.4 identified that the accused possessed with the ganja in a bag. After seeing the same, P.W.4 weighed the ganja by using the weighing machine and found that the same is weighed about 1.250 kgs. Thereafter, around 10.15 a.m., she arrested the accused and in the presence of P.W.1 and PW.2, she recovered the contraband from which she had collected 50 grams of contraband in two pockets for chemical examination (totally 100 grams) and sealed the same.

(iv) In turn, after recovering the same, she brought the accused and the contraband to the Police Station and registered a case in Crime No.1075 of 2010 under Section 8(c) r/w 20(b) (2) (b) of NDPS Act. The printed FIR was marked as Ex.P.6. She forwarded the accused and the contraband to the Court for the purpose of getting order for judicial custody.

(v) In continuation of investigation, P.W.5-Jeyakodi, the then Inspector of Police, Kovilpatti West Police Station, Thoothukudi District, took up the investigation and submitted an application before the Court having jurisdiction to send the sample contraband for chemical examination. In turn, in view of the

<https://hccservices.mca.gov.in/hccservices/> by the Court, P.W.3-Arulraj examined the sample



contraband and issued a report under Ex.P.5 stating that the contraband forwarded from the Court is Cannabis.

(vi) After receipt of the said report, P.W.6-Vijayakumar, the then Inspector of Police, Kovilpatti West Police Station, continued the investigation in this case. He examined the witnesses and recorded their statements and after concluding the investigation, he came to the positive conclusion that the accused/appellant herein is liable to be convicted under the provision of the NDPS Act. He filed a final report, accordingly.

4. Based on the materials available on record, the learned II-Additional Special Judge for NDPS Act Cases, Madurai, framed the charges for an offence punishable under Section 8(c) r/w 20(b)(2)(B) of NDPS Act. The accused denied the charge and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case on the side of the prosecution, 6 witnesses were examined as P.W.1 to P.W.6 and 7 documents are marked as Ex.P1 to Ex.P7, besides 3 Material Objects (M.O.1 to M.O.3).

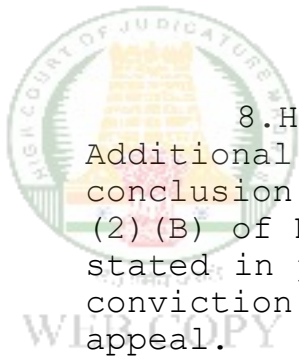
6. (i) Out of the above said witnesses, P.W.1-Rajasekaran, the then Village Administrative Officer, Kovilpatti, speaks about the recovery of contraband from the accused.

(ii) P.W.2-Manimegala, is the Women Head Constable, Kovilpatti West Police Station. She gave evidence as on 29.11.2010, around 10.00 a.m., after explaining the right available under Section 50(1) of NDPS Act to the accused, P.W.4 searched the accused and find out that the accused is possessed with ganja, which is a prohibited item under NDPS Act.

(iii) P.W.3-Arulraj, the Chemical Examiner, speaks about the receipt of sample contraband from the Court and about the examination made on the same. According to him, the recovered contraband is cannabis.

(iv) P.W.4-Latha, P.W.5-Jeyakodi and P.W.6-Vijayakumar are the Police Officers speaks about the receipt of information, securing the accused, obtaining the consent letter from the accused for conducting the search, recovery of contraband, arrest of accused, registration of the case, investigation and also about the filing of final report.

7. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., she denied the same as false. However, she did not choose to examine any witness nor mark any document on her side.



8. Having considered all the materials, the learned II-Additional Special Judge for NDPS Act Cases, Madurai, came to the conclusion that the accused was guilty under Section 8(c) r/w 20(b) (2)(B) of NDPS Act, convicted and sentenced the appellant/accused as stated in paragraph No.2 of this judgment. Aggrieved over the said conviction and sentence, the accused is before this Court with this appeal.

9. I have heard Mr.R.Anand, learned counsel appearing for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State and also perused the records carefully.

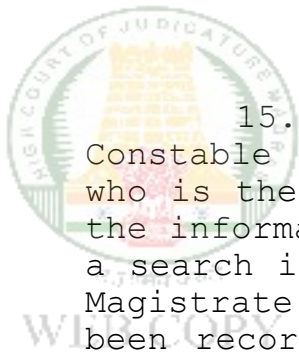
10. The learned counsel appearing for the appellant would contend that while at the time of securing the accused and at the time when the contraband was recovered from her, the Police Officers were not followed the procedures contemplated under Sections 42, 50 and 57 of NDPS Act. The trial Court without considering the said aspect, convicted the accused, which is erroneous in law.

11. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the evidence given by P.W.1 to P.W.6 are clear and narrow that the present case has been investigated by the Police Officer by following the Rules contemplated in the said Act and therefore, it cannot be said that after violating the procedure narrated in the said Act, the present case has been registered. According to him, interference of this Court in the findings arrived at by the trial Court, does not require.

12. I have considered the rival submissions made by the learned counsel appearing on either side.

13. Now, on going through the evidence given by P.W.4, it is apparent that on 29.11.2010 around 9.00 a.m., she received an information from the informer that there was a movement of ganja. In this regard, she would further state that after getting the said information, the same was reduced into writing by her and thereafter, the same was submitted before P.W.5-Inspector of Police for getting permission.

14. Further, P.W.5, who is the Inspector of Police, Kovilpatti West Police Station, speaks about the receipt of information from P.W.1 and about the approval given to P.W.4 for conducting search over the accused. More than that, the information recorded by P.W.4 and the approval given by P.W.5 was marked as Ex.P.6. Therefore, the evidence given by P.W.4 and P.W.5 and the exhibit marked as Ex.P.6 are all found in terms of Section 42 of NDPS Act and in respect to same, there is no omission and lapses in terms of Section 42 of NDPS Act.



15.Secondly, the evidence given by P.W.2, who is the Head Constable present at the time of conducting the search and P.W.4, who is the person conducting the search, are clear and narrow as to the information given to the accused as she is having option to make a search in the presence of Gazetted Officer or before the Judicial Magistrate. In this regard, the reply given by the accused has also been recorded and the same shows that the accused did not want to avail the right available under the Act and she had permitted the Police Officer to conduct the search. The said consent letter given by the accused has also been recorded and the same was marked as Ex.P.2.

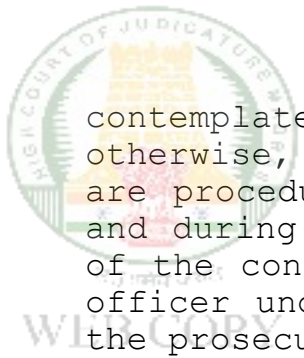
16.In this occasion also, in respect to the validity of the documents and in respect to the evidence given by P.W.2 and P.W.4, there was no dispute on the side of the accused. It shows that during the time of search the procedure laid down under Section 50 (1) of NDPS Act is properly complied with by the Investigation Officer. In this occasion, the evidence given by P.W.1 and P.W.4, would evident that the prohibited contraband was recovered only from the accused.

17.More than that, the evidence given by P.W.3 is sufficient to hold that the accused was possessed with ganja at the time of search. In this aspect, the learned counsel appearing for the appellant would contend that in view of Section 57 of NDPS Act, after made search and recovery, it is the duty vested with the Investigation Officer to send a detailed report to the Superior Officer. Here, it is the case the evidence given by P.W.4 did not disclose the fact that after made recovery, a detailed report has been sent to the Superior Officer and therefore, the case of the prosecution would suffer and the accused is entitled the relief of the acquittal.

18.Now, in respect to the said submission, in the judgment rendered by the trial Court, it was stated that being the reason the provision under Section 57 of NDPS Act is not a mandatory one, the non-compliance of the same by PW4 is not fatal to the prosecution.

19.At this juncture, it is relevant to see the judgment of **Gurbax Singh vs. State of Haryana** reported in **A.I.R. 2001 Supreme Court 1002**, wherein, our Hon'ble Apex Court clearly held that Sections 52 and 57 of NDPS Act is directory and violation of those provisions would not *ipso facto* violate the trial or conviction. The violation of the said provisions may have a bearing on appreciation of evidence regarding the arrest of the accused or seizure of the article.

20.Therefore, in the event that the evidence given by P.W.1 and P.W4 is very clear and narrow that while at the time of securing the accused, P.W.4, after following the necessary provisions



contemplated, arrested the accused and seized the articles. In otherwise, on the side of the accused, there is no plea that there are procedures violated while at the time of arresting the accused and during the time of seizing the contraband. Accordingly, I am of the considered view that non-sending the report to his superior officer under Section 57 of NDPS Act, would not affect the case of the prosecution with entirety.

21.The another submission made by the learned counsel appearing for the appellant is that after recovering the contraband, the same has not been sent to the chemical examination immediately, which is also a lapse on the part of the Investigation Officer. Now, on considering the said submission with the relevant records, it is true on 29.11.2010 onwards the contraband was recovered by P.W.4 and thereafter, the sample contraband was received by the Chemical Examiner only on 22.08.2011. It shows that after nine months from the date of recovery, the contraband was forwarded to the chemical examination.

22. In this regard, on going through the evidence given by the Investigation Officer, it seems that on the day itself the property was handed over before the Judicial Magistrate and in turn, the same was returned by the Court with a direction to produce the same before the competent Court, which is having jurisdiction to try the offence. Therefore, it cannot be said that the property was not immediately handed over to the Court. However, it is the duty of the Investigation Officer to produce the contraband before the Court, which is having the jurisdiction immediately without any delay, but in this case the same has been violated. In the said circumstances, it is necessary to find out whether such delay is fatal to the case of the prosecution or not.

23.In this aspect, the learned Government Advocate (crl.side) appearing for the respondent relied on the judgment of **Hardip Singh vs. State of Punjab** reported in **(2008) 8 Supreme Court Cases 557**, wherein, our Hon'ble Apex Court has held as follows:-

"17... He received the said samples of opium along with case material, being produced before him by P.W.5. It has come on evidence that Inspector Baldev Singh kept the entire case property with him till it was deposited in the office of the Chemical Examiner, Amritsar on 30.09.1997 through ASI Surinder Singh (P.W.3). It has also come on evidence that till the date the parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the dame opium which was recovered from the possession of the appellant. In that view of the matter, delay of about



40 days in sending the samples did not and could not have caused any prejudice to the appellant. The aforesaid contention, therefore, also stands rejected."

24.Now, applying the ratio laid down in the above referred judgment with the case in our hand, here it is the case the evidence given by P.W.4 and P.W.2 reveal the fact that immediately after recovering the contraband, the sample contraband was separated and the same has been sealed by putting Station House Officer seal. In this regard, the Chemical Examiner, who received the sample contraband gave evidence as the sample contraband was received by him with the seal.

25.In otherwise, while at the time of cross-examination of P.W.3, there was no denial on the side of the accused that the seal found in the sample contraband has not been found intact. Therefore, in the absence of any denial on the side of the accused, it is presumed that the evidence given by P.W.3 is admissible and therefore, it should be held that the contraband was received by P.W.3 with correct seal. Therefore, herein also the delay in despatching the seized articles to the Court, is not a significant one.

26.Accordingly, the totality of entire evidence given by the prosecution witnesses proved that during the time of search, the accused was possessed with 1.250 kgs and the said Act is liable to be punished under Section 8(c) r/w 20(b)(2)(B) of NDPS Act. Accordingly, this Court affirmed the findings arrived at by the trial Court.

27.In this occasion, the learned counsel appearing for the appellant would contend that in the present case, the accused is a lady and also the allegation levelled by the prosecution is that she was possessed with 1.250 kgs of ganja. Hence, for the said offence awarding one year imprisonment is not a proportionate one and accordingly, he prays to show some leniency in awarding the sentence to the appellant.

28.On considering the said submissions with relevant records, it is true that the appellant/accused herein is facing this case for the past 11 years. Further, the quantity of contraband recovered is only 1.250 kgs and being the reason that the appellant is a lady, it would appropriate to show some leniency in awarding the sentence.

29.In fine, this Criminal Appeal is partly allowed and the conviction and sentence awarded by the trial Court on the appellant under Section 8(c) r/w 20(b)(2)(B) of NDPS Act is reduced to three months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months is confirmed. The period of imprisonment already undergone by the appellant shall be set off



under Section 428 of Cr.P.C. Bail bond, if any, executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

cp

To:-

- 1.The II-Additional Special Judge for NDPS Act Cases, Madurai.
- 2.The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer, (2C)
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.53 of 2016
15.09.2021

KS (CO)

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