



WEB COPY

Crl. A.(MD)No.137 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.11.2021

DELIVERED ON : 02.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. A.(MD)No.137 of 2017

and

Crl.M.P.(MD)No.9762 of 2019

Ramalu Gug Lot @ Ramalu

... Appellant/Sole Accused

Vs.

Government rep. by
The Intelligence Officer,
NCB, Madurai Sub Zone,
Madurai. F.No.48/1/01/2012

... Respondent /Complainant

Prayer : This criminal appeal is filed under Section 374 of the Criminal Procedure Code, against the judgment passed by the Principal Special Court for E.C. and NDPS Act Cases, Madurai, in C.C.No.33 of 2013, dated 21.12.2016, convicting the appellant for the offence under Sections 8(c) r/w. 21(c) of NDPS Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo further period of one year rigorous imprisonment.

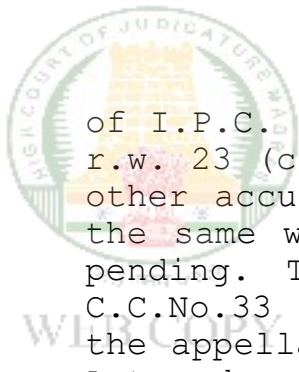
For Appellant : Mr.R.Anand

For Respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor
for NCB Cases

JUDGMENT

This Criminal Appeal has been filed against the judgment passed by the Principal Special Court for E.C. and NDPS Act Cases, Madurai, in C.C.No.33 of 2013, dated 21.12.2016, convicting the appellant for the offence under Sections 8(c) r/w. Section 21(c) of NDPS Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo a further period of one year rigorous imprisonment.

2.The case against the appellant is that the appellant and three others conspired together and gathered 1.906 Kgs of Heroin from various parts of India and try to export the same from Thoothukudi to Maldives. On 18.08.2012 on their way to Thoothukudi, when they travelled in a bus from Hyderabad, this appellant was arrested by the police. A case in F.No.48/1/01/2012 was registered against the appellant and others under Sections 294(b), 324 and 307



of I.P.C. and under Sections 8(c) r/w. 29, 8(c) r/w. 21(c) and 8(c) r/w. 23 (c), 28 of NDPS Act. Since N.B.W was pending against the other accused, the case against the other accused was split up and the same was taken on file as C.C.No.142 of 2014 and that case is pending. The case against the appellant was taken on file as C.C.No.33 of 2013. After trial, the Special Court, Madurai, found the appellant guilty under Sections 8(c) r/w. Section 21(c) of NDPS Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo a further period of one year rigorous imprisonment. Against which, the appellant has approached this Court by way of this appeal.

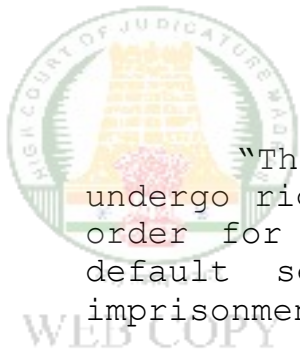
3.On the side of the appellant, it is stated that the appellant is in custody from the date of arrest itself, ie. for the past 9 years 9 months. Now, the appellant is not questioning the conviction and the petitioner is pleading for reduction of default sentence. Since the appellant is in custody from 17.08.2012 onwards, he is not in a position to pay the fine amount. For the poverty of the appellant, he has to be inside for one more year. There are various judgments, wherein, this Court has held that keeping a person inside for his poverty is unwarranted. To substantiate this contention, a judgment of this Court in Criminal Appeal Nos.161 and 281 of 2014 [S.Edmand V. State by the Intelligence Officer], dated 07.03.2016 is cited.

4.The learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court reported in **2007-11-SCC-243 [Shanti Lal V. State of M.P]** and another judgment of this Court in **Crl.A.Nos.528 of 2013 and 552 of 2012, dated 21.07.2014** is also cited.

5.On the side of the prosecution, it is stated that the appellant belonged to other State, he gathered contraband from various parts of India. If the sentence is modified, there is a chance for the appellant to indulge in similar offence again. The fine amount imposed by the trial Court is reasonable in nature and prayed the appeal to be dismissed.

6.The arguments on the side of the appellant is only for reduction of default sentence. The appellant is not even questioning the conviction or the sentence. The appellant has already undergone major period of the sentence. The appellant is in custody from the date of arrest itself (ie.17.08.2012). Though the judgment was passed on 21.12.2016, the appellant was not able to pay the fine amount sofar. Only due to poverty, the appellant has to be in custody for a period of one more year.

7.In view of the same, this Court is inclined to modify the sentence as follows:-



"The conviction and sentence imposed on the appellant to undergo rigorous imprisonment for 10 years is hereby confirmed. An order for payment of fine of Rs.1,00,000/- is also upheld. The default sentence alone is hereby reduced. **One Year** rigorous imprisonment is reduced to **One month** rigorous imprisonment."

8. With the above modification, this Criminal Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Ls

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Principal Special Court for E.C. and NDPS Act Cases,
Madurai.

2. The Intelligence Officer,
NCB, Madurai Sub Zone, Madurai.

3. The Superintendent of Prison,
Central Prison, Madurai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.ARUL VADIVEL@SEKAR, Advocate (SR-37238[F] dated 03/12/2021)

+1 CC to M/s.R.ANAND, Advocate (SR-37337[F] dated 03/12/2021)

Judgment made in
Crl. A. (MD) No.137 of 2017
02.12.2021

ps (CO)

TR(06.12.2021) 3P 7C