



Crl.A.No.204 of 2018
and
Crl.M.P.No.8661 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.07.2022

Pronounced on :13.07.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.A.No.204 of 2018
and
Crl.M.P.No.8661 of 2022

Mohandass

.. Appellant

-versus-

State rep.by
The Inspector of Police,
NIB/CID Police Station,
Coimbatore District,
(Crime No.60 of 2015)

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Cr.P.C.,
praying to set aside the judgment made in C.C.No.48 of 2016 on the file of
the Additional District/Presiding Officer Special Court for EC Act Cases,
Coimbatore dated 08.03.2018 and acquit the accused.

For Appellant :Mr.T.Muruganantham
For Respondent :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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JUDGMENT

This appeal against conviction filed by the sole accused in C.C.No.48 of 2016 on the file of the Special Court for EC Act Cases, Coimbatore.

2. The appellant was charged for offences under Section 8(c) r/w 20(b)(ii)(c) and Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for the alleged possession of 21 Kgs ganja recovered from his possession while he was transporting it in a blue colour Alto car bearing registration No.UP-80-Y-5063 on 09.04.2015 at 12.30 p.m.

3. On considering 10 witnesses for prosecution and 11 exhibits along with 3 material objects marked, the trial Court held the accused guilty of offence under Section 8(c) r/w 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “NDPS Act”) and convicted and sentenced him to undergo 10 years RI and to pay a fine of Rs.1,00,000/- in default to undergo one year RI, but, acquitted the accused for the offence under Section 25 of the NDPS Act.



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4. The case of the prosecution as spoken by the prosecution witnesses is that on 09.04.2015 at about 11.15 a.m., PW-1 (Mr.Muthupandi) Sub Inspector of Police, NIB CID, Coimbatore received a phone call through land line by an informant that on 09.04.2015 at about 12.00 noon, a person about 25 years old is likely to come in a Blue Colour Maruthi Alto Car bearing Reg.No.UP-80-Y-5063 with ganja near Seeruvani Main Road, Sundakamuthu Junction and he will be waiting for PW-1 at that place to identify the person. This information was reduced into writing by PW-1 and placed it before the Deputy Superintendent of Police, NIB, Coimbatore for permission to conduct raid. Based on the said information, the Deputy Superintendent of Police(PW-10-Mr.Ramamurthy)permitted PW-1 to proceed. Accordingly, the police team headed by PW-1 and Head Constable went to the spot and kept surveillance along with the informant. At about 12.30 p.m., they intercepted the blue colour Maruthi Alto Car bearing Reg.No.UP-80-Y-5063. They introduced themselves and enquired the driver of the car, who discloses his name as Mohandass, S/o Subramani, Pappambalpuram, Andipatti, Theni District, to whom PW-1 declared his



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intention to search the car and informed him about his raid to be searched before a Judicial Magistrate or a Gazetted Officer. The accused denied to exercise the said option and agreed to be searched by PW-1(Sub Inspector of Police). The option given to the accused and his refusal to exercise the option and consent to be searched by the Sub Inspector of Police were all reduced into writing in the presence of three witnesses and the same is marked as Ex.P2. Thereafter, the accused himself voluntarily produced a bundle covered with brown colour cloth. They found 11 packets in it. On weighing, 10 packets were each 2 kgs and 1 packet 1kg. Inside those packets, there were leaves and stalks of ganja. Two samples each weighing 25 grams were drawn from 11 packets and they were sealed separately and numbered as PS-1 to PS-22. The bulk were packed and sealed. They were numbered as P1- to P11 and the same was seized under mahazar Ex.P3 in which Mr.Poornachandran, Head Constable (PW-3), independent witness Balasubramanian (PW-2) signed as witnesses. The accused was arrested for possessing ganja and remanded to judicial custody.



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5. In the course of investigation, the owner of the Alto car used for transporting ganja was ascertained as one Seethapathi (PW-9). In his name, the vehicle stand. However, he turned hostile. He had deposed that he sold the vehicle to one Pandian long ago. The trial Court considering the other incriminating evidence spoken by the prosecution witnesses held that because one of the witness (PW-2) turned hostile, the evidence of PW-1 and PW-3 cannot be ignored regarding the seizure of M.O.1 and M.O.2(series) of ganja. So, referring Section 54 of the NDPS Act, which gives a presumption for possession, convicted the accused and sentenced him as stated earlier.

6. The learned counsel appearing for the appellant submitted that the trial Court has miserably failed to take note of the fact that the alleged seizure of 21 kgs of ganja from Maruthi Alto Car bearing Reg.No. UP-80-Y-5063 has not been proved by reliable independent witness. PW-1 and PW-3 are police men who had fabricated the case. Their evidence cannot be relied upon, more particularly, when PW-2-independent witness had denied about



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the seizure under mahazar (Ex.P3). Further, the learned counsel strongly appealed that the contraband alleged to have been seized on 09.04.2015. However, it was produced before the Special Court only on 01.06.2015. In between there was a gap of 51 days and no plausible explanation given for its safe custody to rule out tampering. In such case, it amounts to violation of Section 52 of NDPS Act, this Court in ***Danraj v. State of Tamil Nadu, in Crl.A.No.319 of 2012 dated 13.03.2019*** had specifically held that when there is unexplained delay regarding production of seized contraband to the Court, the benefit has to be given to the accused. In this case, though the delay is 51 days, the trial Court has ignored the same.

7. The learned counsel appearing for the appellant also submitted that the prosecution has failed to prove that the vehicle which stands in the name of Seethapathi (PW-9), as per the evidence of PW-6 (Senior Assistant, RTO Office, Aligarh, Uttar Pradesh). PW-9 however, had stated that he sold the car to one C.Pandian after signing TO Form. However, the said Pandian, who was examined as PW-7 has denied such transaction with Seethapathi



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(PW-9). Similarly, two brokers whom according to the prosecution mediated the transaction for the sale of the car from Pandian to Mohandass the accused/appellant also turned hostile and he did not support of the case of the prosecution. Therefore, he submitted that the trial Court erred in convicted the accused/appellant by applying Section 54 of the NDPS Act.

8. The learned Government Advocate (Crl.Side) submitted that based on the specific information, the raid was conducted in a public road and 21 kgs of ganja was seized in the car driven by the accused. Though PW-2 witness to the mahazar had turned hostile, the evidence of PW-1 and PW-3 need not be suspected since they have spoken about events which happened while discharging their duty. The contraband seized were produced before the Judicial Magistrate on the same day along with the accused. While remand as per the instruction of the Magistrate, the contraband was taken back to the station and later, it was produced before the Special Court on 01.06.2015. When the seal on the samples were found intact and so, recorded by the Analyst(PW-8), there is no reason to suspect the tampering



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just because there was a delay in producing the contraband to the Special Court.

9. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent/State.

10. The arguments of the learned counsel appearing for the appellant/accused are three folds. The ownership of the car alleged to have been used for transportation of ganja found to be one Seethapathi(PW-9) and whose name the vehicle stands in RTO report. The prosecution attempted to fix the accused as a person who purchased the car from one C.Pandian failed. The brokers named by Seethapathi turned hostile. The seizure of the contraband when not proved beyond doubt the conscious possession of the alleged contraband by the accused cannot be drawn.

11. This Court, on perusing the evidence finds that the information (Ex.P1) has been recorded at 11.15 a.m., on 09.04.2015 and placed it



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before the Deputy Superintendent of Police at 11.30 a.m. While PW-1 the receiver of the information say he received the information at office through land line, PW-10 (Ramamurthy), who received the written information from PW-1 and made an endorsement in the bottom of the information, had deposed that when the information was placed before him at 11.30 a.m., he was in the station but PW-1 was on patrol. PW-10 Ramamurthy admits that Form 95 and the properties were forwarded to the Court belatedly. He has not given any satisfactory explanation for 51 days delay in producing the property to the Special Court. The Court taking note of the fact that the property was produced before the Judicial Magistrate on 09.04.2015 and the accused produced for remand had satisfied itself that the contraband was in the proper custody.

12. This Court also finds that the prosecution had not proved the fundamental fact that the contraband was seized from the accused, while it was transported in the Maruthi Alto Car as (M.O.3). The doubt about the alleged seizure arises because PW-2 independent witness has turned hostile



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and not supported the case of the prosecution regarding seizure, besides PW-4, PW-5, PW-7 had also turned hostile. The fact that the Maruthi car was really in possession of the accused at the relevant point of time also not proved.

13. In such circumstances, unexplained 51 days delay in forwarding the seized contraband to the Special Court gains significance. Section 52 of the NDPS Act mandates safe custody of the contraband and if there is any violation, it will lead to suspect tampering.

14. Section 54 of the NDPS Act regarding presumption is in respect of the commission of offence, if the possession is proved. This Section provides presumption that if any prohibited narcotic drug or psychotropic substance or controlled substance found in possession of the person, that possession has to be presumed as a illegal possession, unless and until contrary is proved. If the possession itself is not proved, Section 54 of the NDPS Act will not apply.



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15. The presumption under Section 54 of the NDPS Act is not for possession but for illegitimacy. If the possession is proved, presumption unless rebutted is the possession in illicit possession, unless and otherwise the possessor proves that his possession is licit. Under this Act, the possession of psychotropic substance and narcotic drugs by certain persons is permissible under certain circumstances. For the said reason, Section 54 of the Act gives a presumption which could be rebutted by the possessor that his possession of the said article is legal. As noted, since the prosecution has failed to prove the recovery of contraband from the appellant, by applying Section 54 of the NDPS Act, he cannot be convicted. Hence, the judgment of the trial Court is set aside.

16. In the result, this Criminal Appeal is allowed. The judgment of the trial court, viz., the II Additional District Judge/Presiding Officer Special Court for EC Act Cases, Coimbatore in C.C.No.48 of 2016 dated 08.03.2018 is set aside. The appellant is set at liberty. Bail bond, if any



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executed by the appellant shall stand cancelled. The appellant/accused is directed to be released forthwith, unless he is required in connection with any other case. The fine amounts, if any paid by the appellant/accused, shall be refunded. Consequently, connected Miscellaneous Petition is closed.

13.07.2022

Index:yes
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To:

- 1.The Additional District Judge/Presiding Officer
Special Court for EC Act Cases, Coimbatore.
- 2.The Inspector of Police, NIB/CID Police Station,
Coimbatore District.
- 3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery Judgment made in
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