



Crl.A.No.581 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.07.2022

Pronounced on :11.07.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.581 of 2013

Vincent

.. Appellant

/versus/

State rep.by
The Inspector of Police,
NIBCID, Chennai.

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentences passed by the Principal Special Judge, Special Court under EC and NDPS Act, Chennai and made in C.C.No.22 of 2008 by judgment dated 21.08.2013.

For Appellant

:Mr.G.S.Mahesh for

Mr.T.S.Srinivasan

For Respondent

:Mr.S.Udayakumar

Govt. Advocate (Crl.Side)



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JUDGMENT

This appeal is filed against the judgment of conviction and sentence passed by the Principal Special Judge, Special Court under EC and NDPS Act, Chennai in C.C.No.22 of 2008, dated 21.08.2013 holding the accused/appellant herein guilty of offence under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “NDPS Act”) and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.30,000/- in default, to undergo 6 months Rigorous Imprisonment.

2. The case of the prosecution is that on 03.07.2006, at about 04.30 p.m., the Sub Inspector of Police, attached to Narcotics Intelligence Bureau (NIB), Chennai received an information from his informant over phone that Vincent aged about 35 is likely to come to Wall Tax Road Subway near Central Railway Station, Chennai between 05.30 p.m and 10.00 p.m to sell ganja. Mr.Murugaiyan (PW-2), the Sub Inspector of Police reduced the said information in writing and after obtaining permission from the Inspector of Police, who is the immediate superior, he went to the spot with his team and



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keeping surveillance.

3. At about 05.30 p.m, the accused came near subway carrying a bag on his shoulder. On identifying the accused by the informant, Mr.Murugaian, Sub Inspector of Police, intercepted the accused and interrogated him. After confirming his identity, the Sub Inspector of Police disclosed the information that they received about him regarding possession of ganja. Before conducting search, he was informed about the option under Section 50 of the NDPS Act. The accused had no objection for the police to search him and after obtaining the consent in writing, the bag of the accused was searched and they found 10 kgs of ganja in it. After drawing two samples each 50 grams and the remaining contraband of 9.900 grams was sealed and labelled. The two samples were similarly sealed and labelled. After preparing the mahazar for the seizure, the accused along with the property were brought to the station. Confession of the accused was recorded and the accused was handed over to the Inspector of Police along with the contraband and the Report under Section 57 of the NDPS Act.



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4. Thereafter, the Inspector of Police remanded the accused into the judicial custody and the property was forwarded to the Court. On the request of the Inspector of Police the samples were sent for chemical analysis through Court. Smt.Sofia, Scientific Officer attached to the Tamil Nadu Forensic Science Laboratory conducted test of the contraband and submitted her report concluding the samples contained cannabinoid.

5. The trial Court framed charges under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and tried the accused. To prove the case, the prosecution examined four witnesses and marked 10 exhibits. Material Objects were marked as M.O.1 to M.O.3.

6. The trial Court on appreciating the evidence, held the accused guilty and convicted and sentenced the accused to undergo 3 years RI and to pay a fine of Rs.30,000/- in default, to undergo 6 months RI.

7. The accused being aggrieved by the conviction and sentence, has



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preferred this appeal on the ground that the inconsistency and contradiction of the prosecution witness have not been properly appreciated by the Court below.

8. According to the learned counsel appearing for the appellant, the information received by PW-2, which is marked as Ex.P3 indicates that the same was received on 03.07.2006 at 16.30 hours. Immediately, it was reduced into writing and after obtaining permission from the immediate superior, PW-2 (Mr.Murugaian) had proceeded to the spot along with his team. The mahazar for seizure is alleged to have been prepared on 03.07.2006 at 18.45 hours. However, PW-2 (Mr.Murugaian) in his chief examination had stated that the contraband was seized under mahazar at 06.00 p.m. Thus, there is a contradiction in the oral evidence of PW-2 (Mr.Murugaian) and mahazar (Ex.P5) regarding time and seizure.

9. Further, Section 57 Report of PW-2 submitted to PW-3, it is mentioned that the mahazar was prepared at 19.15 hours. Therefore, there is vital contradiction in time regarding seizure. The mahazar report, Section 57



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report and the ocular evidence of PW-2 gives three different times of seizure, which renders the seizure highly doubtful.

10. Further, the learned counsel appearing for the appellant submitted that the contraband was not forwarded immediately to the Court and Form 95 marked as Ex.P9 indicates that the contraband, which alleged to have been seized on 03.07.2006 has been produced before the Special Court for NDPS Act only on 02.08.2006 and there is no explanation regarding the custody of the contraband till it was produced before the Special Court.

11. The learned counsel appearing for the appellant further submitted that though the seizure has taken place in a public place, the prosecution has not ensured independent witnesses to the seizure. The crime number found on the material objects, which alleged to have been seized before registration of the First Information Report, creates doubt about the case of the prosecution. Therefore, benefit of doubt should have been extended to the accused.



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12. In response to the above submission, the learned Government Advocate (Crl.Side) submitted that based on the information, the contraband was seized from the accused at 16.45 hours near Central Railway Station, Wall Tax Road Sub Way. An erroneous entry in Section 57 Report with 30 minutes difference is not fatal to the case of the prosecution. The sequence of the events as narrated by PW-2 and PW-3, who have conducted seizure of the contraband from the accused without any doubt prove the case of the prosecution. The accused, who had in possession of ganja, had not explained about his possession.

13. As far as the custody of the contraband along with the accused remanded before the Magistrate, the property was produced before the Magistrate and he has made an endorsement in Form-91 “case property produced, produced the same before the Special Judge, NDPS Cases, Chennai on the next working day”. It was produced before the Special Court on 02.08.2006 and the property clerk has made an endorsement “checked and received”. The NIB seal tally with the seal found in the contraband. PW-1, the Scientific Officer received sample of the contraband had testified



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that the sample bag has the seal of NIB and it was intact. Therefore, though there was a delay in producing the contraband before the Special Court, though it was produced before the Magistrate soon after the seizure with seal found intact by the scientific officer PW-1 there can be no doubt of tampering.

14. Heard the learned counsel appearing for the appellant and learned Government Advocate (Crl.Side). Considered their submissions.

15. It is the case of seizure of 10kgs of ganja based on the prior information. The information received by PW-2 has been duly reduced into writing and the same is forwarded to the immediate superior, who has pursuing the information and permitted PW-2 to proceed. Thereafter, on completion of seizure, a complete report been submitted in compliance of Section 57 of the NDPS Act and the said report is marked as Ex.P7. PW-2, PW-3 and PW-4 speaks about the receipt of the complete report under Section 57 of NDPS Act. As far as the discrepancies in the time of seizure, in the mahazar and First Information Report the time of seizure is



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mentioned as 18.45 hours, PW-2 had mentioned the time of seizure as 18.00 hours in his deposition and 19.15 hours in his 57 Report. This error is to be ignored. The accused has signed the mahazar marked as Ex.P5. On the cover of the contraband, which has marked as M.O.1 to M.O.3, the signature of the accused has been obtained and the same has been checked. The cover containing sample was checked by the property clerk of Special Court, who received it under Form 95. The seal and the label were found correct and intact by PW-1, who received it for chemical analysis. Therefore, two grounds raised, in the appeal, namely discrepancy in the time of mahazar and delay in forwarding the contraband to the Special Court are duly explained by the prosecution. The possession of the contraband with the accused been proved and the mandatory procedures duly followed. This Court finds no error in the finding of the trial Court.

16. Hence, **this Criminal Appeal is dismissed.** The judgment of the trial Court viz., the Principal Special Court, Special Court under EC and NDPS Act, Chennai in C.C.No.22 of 2008 dated 21.08.2013 is hereby confirmed. The trial Court is directed to secure the accused to undergo the



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remaining period of sentence imposed on him.

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To:

- 1.The Principal Special Judge, Special Court under EC and NDPS Act, Chennai.
- 2.The Inspector of Police, NIBCID, Chennai.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.
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Delivery Judgement made in
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