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Crl.A.No.303 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.303 of 2018

Kumar

... Appellant

Vs

The State by
The Inspector of Police,
NIB/CID
Coimbatore District.

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside judgment and sentence passed by the learned Additional District Court/E.C. Act Special Court, Coimbatore in C.C.No.89 of 2017 dated 15.03.2018 and acquit the appellant.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal is arising out of the judgment dated 15.03.2018 passed in C.C.No.89 of 2017 on the file of the learned Additional District Judge/E.C. Act Special Court, Coimbatore, thereby convicting the appellant for the offence punishable under Section 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as “the NDPS Act”).

2. The case of the prosecution is that on receipt of secrete information a team of Police engaged by the respondent went to the place of crime on 17.06.2015 at about 07.45 a.m., and after identifying the accused, made search on him. He was found in possession of Ganja weighing 1.550 kg. After complying all the procedure as contemplated under the NDPS Act, the respondent registered FIR in Crime No.96 of 2015 for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.89 of 2017.

3. In order to bring the charges to home, the prosecution examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.9. The prosecution



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also produced material objects in M.O.1 and M.O.2. On the side of the accused, no one was examined and no documents were marked. On a perusal of oral and documentary documents, the trial Court found the appellant's guilty and sentenced him to undergo three years rigorous imprisonment and also to pay a fine of Rs.10,000/- in default to undergo further six months rigorous imprisonment. Aggrieved by the same, the present appeal.

4. The learned counsel appearing for the appellant submitted that the appellant did not engaged any counsel as such he did not properly cross-examined the prosecution witnesses. The respondent failed to follow the procedure mandatory under Section 50 of the NDPS Act as such the entire case of the prosecution cannot be sustained as against the appellant. The alleged contraband was seized from the appellant on 17.06.2015, whereas it was produced before the concerned Court only on 23.07.2015. Further the prosecution failed to explain the delay properly. Therefore, the conviction as against the appellant cannot be sustained and he prayed to allow this appeal.



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5. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police submitted that in order to bring the charges home, the prosecution examined P.W.1 to P.W.4 and also marked documents in Ex.P.1 to Ex.P.9. The prosecution also produced material objects in M.O.1 & M.O.2. On secret information, the respondent obtained permission, which was marked as Ex.P.1 and went to the place of occurrence on 17.06.2015 at about 7.45 am. The informer identified the appellant to the team engaged by the respondent. After completion of all formalities as contemplated under Section 50 of the NDPS Act, FIR has been registered and the same has been marked as Ex.P.4. Thereafter, the respondent completed the investigation and filed final report. Therefore, the respondent followed all the procedure as contemplated under the NDPS Act and the trial Court rightly convicted the appellant. Hence, he prayed for dismissal of the present appeal.

6. Heard Mr.S.N.Arunkumar, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl.Side)



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appearing for the respondent/Police.

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7. The appellant is the sole accused and on secrete information the respondent police made search on the appellant and found him in possession of 1.550 grams Ganja. The procedure under Section 50 of the NDPS Act was followed by the respondent and the letter dated 17.06.2015 issued by the appellant was marked as Ex.P.2. The seizure mahazar was also marked as Ex.P.3. Therefore, the respondent clearly followed the procedure which is mandatory under Section 50 of the NDPS Act.

8. Insofar as the delay in sending the contraband to the Court is concerned, the contraband was seized from the appellant on 17.06.2017 and on the same day the samples were taken for chemical analysis, which were produced as M.O.1. The analysis report was marked as Ex.P.7. The remaining contraband was produced as M.O.2. Admittedly, there is no shortage in the contraband. Though the list of properties sent to the concerned Magistrate on 17.06.2015 itself, the contraband was not



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annexed, as such it was returned. Thereafter, after completion of investigation, the respondent produced the contraband which was duly received on 23.07.2015. Though there was a delay in producing the contraband before the Court below, no prejudice caused to the appellant, since there was no shortage in the contraband and no other contravention found in the procedure as contemplated under the NDPS Act. Therefore, the trial Court rightly convicted the appellant and this Court finds no infirmity or illegality in the order passed by the trial Court.

9. However, the learned counsel appearing for the appellant submitted that the sentence may be reduced to some extent. Considering the above submission, this Court is inclined to reduce the sentence imposed by the trial Court. Accordingly, the conviction imposed on the appellant is hereby confirmed. Insofar as the sentence is concerned, it is reduced from three years to two years. Other conditions shall remain intact.

10. Accordingly, the Criminal Appeal stands partly allowed. The



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trial Court is directed to take steps to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

26.10.2022

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.,

rts

To

1. The Additional District Court
/E.C. Act Special Court,
Coimbatore
2. The Inspector of Police,
NIB/CID,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

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