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Crl.A.No.532 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

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

Crl.A.No.532 of 2018

Lakshmi

... Appellant

Vs

The State rep by
The Inspector of Police,
T-9, Pattabiram Police Station,
Chennai
(Crime No.335 of 2014)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the Judgment dated 10.07.2018 passed in C.C.No.33 of 2015 on the file of the Principal Special Judge under NDPS Act, Chennai.

For Appellant : M/s.L.Srileka

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

ORDER

This Criminal Appeal has been filed as against the Judgment dated 10.07.2018 passed in C.C.No.33 of 2015 on the file of the Principal Special Judge under NDPS Act, Chennai, thereby convicted the appellant for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act.



2. The case of the prosecution is that on 14.05.2014, when P.W.1 was in T-9 Pattabiram Police Station, he received a secret information from the informer, that the accused is selling Ganja in whole sale and retail manner. Immediately, P.W.1 and his team went to the scene of crime and when they identified the accused/appellant, she was found in possession of Ganja weighing 1.350 Kgs. After all the formalities, the respondent police has registered the FIR in Crime No.335 of 2014 for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act as against the appellant.

3. After completion of investigation, the respondent police filed final report and the same has been taken cognizance for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act in C.C.No.33 of 2015 by the Trial Court.

4. On the side of the prosecution, they examined P.Ws.1 to 5 and marked Exs.P1 to P12. The prosecution has also produced material objects 1 & 2. No one was examined on the side of the appellant and no documents were marked by her to disprove the case of the prosecution.

5. On perusal of oral and documentary evidence, the Trial Court found



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the appellant guilty for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act and sentenced her to undergo 5 years Rigorous Imprisonment and also imposed fine of Rs.50,000/-, in default to undergo one year Rigorous Imprisonment. Aggrieved by the same, the present appeal.

6. The learned counsel appearing for the appellant submitted that the prosecution has not complied with the mandatory provision as contemplated under Section 42 of NDPS Act ; the alleged contraband weight was not exactly shown in the seizure mahazar by the prosecution ; P.W.2 categorically deposed that the contraband was weighed along with the plastic bag and therefore, the exact weight was not shown by the prosecution in order to prove the case of the prosecution. That apart, the prosecution failed to follow the mandatory provision as contemplated under Section 50 of NDPS Act, while conducting personal search and seizure and there were so many discrepancies and defects while weighing the contraband and while taking samples for chemical examination. Accordingly to the learned counsel for the appellant, without considering these facts and circumstances, the Trial Court had mechanically convicted the appellant for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act.

7. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that in order to bring home the charge, the prosecution



had examined P.Ws.1 to 5. Admittedly, the appellant did not cross examine P.Ws.1 and 2. Therefore, the presumption arises as contemplated under Section 54 of NDPS Act and the appellant failed to disprove the same by rebuttal evidence. Therefore, the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

8. Heard, M/s.L.Srileka, learned counsel appearing for the appellant and Mr.A.Gopinath, Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

9. On receipt of secret information, P.W.1 and his team went to the scene of crime on 14.05.2014 at about 8.40 a.m. and conducted surveillance at about 9.00 a.m., the appellant came to the scene of crime with a white colour polythene bag. On being identified by the informer, P.W.1 and his team intercepted her and she being informed about P.W.1's right to search her in the presence of an authorised Executive Officer and on service of Ex.P2, notice of search, after following the procedure as contemplated under Section 42 of NDPS Act, one police constable, who was examined as P.W.2, made search on the appellant,. On search, the appellant was found in possession of Ganja weighing 1.350 Kgs. Two samples were taken from the contraband, each



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containing 50 grams, for chemical analysis. The remaining contraband weighing 1.250 Kgs was seized by mahazar, which was marked as Ex.P3 and produced before the Court below. After preparing arrest memo, the appellant was arrested and remanded to judicial custody. Thereafter, a report was also prepared as contemplated under Section 57 of NDPS Act. It was marked as Ex.P6. Under Form 95, the contraband was deposited and the same was marked as Ex.P8. FIR was marked as Ex.P9. Thereafter, the respondent received analysis report, which was marked as Ex.P11 and filed final report.

10. In support of its case, the prosecution examined P.Ws.1 and 2. P.W.1 categorically deposed that he received secret information from the informer and accordingly went to the scene of crime and made search by P.W.2. In fact P.Ws.1 and 2 were not cross examined by the appellant. Therefore, the appellant failed to rebut the presumption as contemplated under Section 54 of NDPS Act. Hence, the Trial Court rightly convicted the appellant for the offence punishable under Section 8(c) read with 20(b) (ii) (B) of NDPS Act.

11. In view of the above, this Court finds no infirmity or illegality in the conviction rendered by the Principal Special Judge under NDPS Act, Chennai in C.C.No.33 of 2015 dated 10.07.2018 and the same is confirmed.



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12. At this juncture, the learned counsel for the appellant submitted that insofar as the sentence imposed is concerned, the petitioner is a very old lady and she is suffering from age old ailments. Therefore, the sentence may be reduced.

13. Taking into consideration of the aforesaid submission, the sentence imposed on the appellant is hereby reduced from 5 years to 2 ½ years. Accordingly, this Criminal Appeal is partly allowed, by reducing the sentence alone.

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Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Principal Special Judge under NDPS Act,
Chennai.

2. The Inspector of Police,
T-9, Pattabiram Police Station,
Chennai.



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3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J,

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