



CRL A No.1046 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	28.09.2022
Pronounced on	:	11.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.1046 of 2022

and

CrI.M.P.No.13988 of 2022

Poongothai

... Appellant

Vs.

State through
The Inspector of Police
NIBCID

Coimbatore District
(In Crime No.46 of 2020)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to call for the records and set aside the Judgment and conviction imposed by the Special Court under EC Act/NDPS Act, Coimbatore, C.C.No.98 of 2020 dated 25.08.2022 against the appellant/accused.

For Appellant : Mr.S.Mohamed Ansar

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment of conviction and sentence imposed by the Special Court under EC Act/NDPS Act, Coimbatore, in C.C.No.98 of 2020 dated 25.08.2022, against the appellant herein.

2.The respondent police registered the case in Crime No.46 of 2020 against the appellant for the offence under Section 8(c) read with 20(b)(ii)(B) and 25 of Narcotic Drugs and Psychotropic Substance Act 1985 (herein after referred to NDPS Act, 1985) and after completing the investigation, laid charge sheet for the offences under Section 8(c) read with 20(b)(ii)(B) and 25 of NDPS Act before the Special Court under EC Act/ NDPS Act, Coimbatore and the learned Judge taken up the charge sheet on file in C.C.No.98 of 2020 and after completing the formalities, framed the charges against appellant herein for the offence under Section 8(c) read with 20(b)(ii)(B) and 25 of NDPS Act 1985.



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3. After framing the charges, in order to prove the case of the prosecution during trial before the trial Court, totally 7 witnesses were examined as P.W.1 to P.W.7 and 13 documents were marked as Exs.P.1 to Ex.P13 besides 3 material objects were exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence were produced.

5. On conclusion of trial, hearing the arguments advanced on either side and also considering the materials, the Special Court found the guilt of the accused and convicted and sentenced to undergo rigorous imprisonment for Ten years and to pay fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for further period of six months for the offence under Section 8(c) read with 20(b)(ii)(B) of NDPS Act; to



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undergo Rigorous Imprisonment for Ten Years and to pay fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for further period of six months for the offence under Section 25 of NDPS Act and both the sentences were ordered to run concurrently. Challenging the said Judgment of conviction and sentence, the accused has filed the present appeal before this Court.

6. The case of the prosecution is that on 08.09.2020 at about 12.30 hours, the accused was found to be in possession of 16.000 kgms of Ganja in a two wheeler viz., Honda Activa bearing Regn.No.TN 33 BS 9610.

7. The learned counsel for the appellant would submit that the FIR registered in Crime No.46 of 2020 dated 08.09.2020 shows 19.00 hrs. but the Crime number was mentioned in the arrest intimation form which preferred at the occurrence place at 14.30 hrs. and that there is no other material placed by the P.W.1 for the arrest of the accused at the occurrence place except this document. But this document was also



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preferred at the police station after registering the FIR which clearly reveals that the respondent foisted false case against the appellant. He would further submit that P.W.1/Sub Inspector of Police not submitted the Secret Information Report/Ex.P.1 before the Inspector of Police in person. P.W.1 in her deposition admitted that she informed about the secret information to the Inspector of Police/P.W.6 over phone only. But there is no material placed before the trial Court regarding phone intimation which would clearly show that no information was received by P.W.1 and no information was intimated to the Inspector of Police/P.W.6 and no permission was given by the Inspector of Police/P.W.6 and that P.W.1 has created Ex.P.1 at the police station after foisting the false case against the appellant. Further the prosecution has failed to establish the person (secret informer) who identified the appellant at the occurrence place and P.W.1 had not given any details about who identified the appellant at the spot and whether the informer came to the occurrence place to identify the appellant or not which would clearly reveal that the informant not identified the appellant at the occurrence place. Further, P.W.1 and P.W.6 themselves admitted that the



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General Diary and Case Diary of this case were not produced before the trial Court which would clearly show that no such occurrence took place on the date of occurrence. He would further submit that P.W.1 prepared has two intimations of secret information but there was no explanation given in the special report/Ex.P.5 and P.W.6 has signed in both the intimations but not given any explanation at the time of remand. He would further submit that the signature of the appellant in Ex.P.2/consent letter for search has been obtained forcefully. Further, the arrest of the appellant was not intimated to her son. Though Inspector of police/P.W.6 mentioned in the arrest memo that the arrest was informed to the son of the appellant through SMS, but what information was sent to her son was not attached with the arrest memo. He would further submit that there was no time mentioned in Ex.P.5/Special Report at what time P.W.1 submitted the report and and what time P.W.6/Inspector of Police received the same. P.W.1 did not mention about the equipment which was used to measure the contraband/M.O.1 and M.O.2 in the Seizure Mahazar/Ex.P.3. There is no material placed before the trial Court regarding the arrest of the accused at the occurrence place and even



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P.W.1 admitted that there is no material to prove the arrest of the accused at the occurrence place. He would further submit that there is no independent witness for the place of occurrence, arrest and seizure and no explanation was given by the prosecution regarding the official witnesses which is Violation of mandatory provisions and Principles. Therefore, the conviction recorded by the trial Court warrants interference.

8. The learned Additional Public Prosecutor appearing for the respondent police would submit that the document/Ex.P.1 is a genuine one. The prosecution need not reveal the route of all the secret informations and the prosecution can reserve the absolute privilege to save such facts to maintain the confidentiality. The General Diary and the Case Diary are not necessary material documents to be submitted before the Court and the non submission of the official records meant only for reference, does not fatal to the merits of the case. The deposition of P.W.6/Inspector of Police, would clearly reveal that the relevant entries are made in the General Diary. The secret information report/Ex.P.1



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which was marked through the Sub Inspector of Police/P.W.1, would clearly reveal that due intimation was given and permission was acquired from her Superior Officer/P.W.6/Inspector of Police to proceed further. Ex.P.5 is the detailed report filed by Sub Inspector of Police/P.W.1. Both Ex.P.1/Secret Information Report and Ex.P5/Detailed report are two different documents meant to define two purposes as part of the procedure. The appellant thereby did not derive the purpose of raising adverse allegation. The exhibits marked were duly considered by the trial Court. Further, it is very clear from the deposition of P.W.1 that the consent for search was recorded in the presence of two witnesses who are police officials and the said fact has been corroborated by the evidence of P.W.2/Head Constable, who has spoken about the presence of other witness at the time of getting signature from the appellant in Ex.P.2/consent for search. When there is clear documentary evidence corroborated through oral evidence, the allegation that the trial Court failed to consider Ex.P.2/consent letter for search, is not acceptable. Further, the intimation regarding the arrest of the petitioner was duly given to her son through SMS. The appellant herein does not deny that



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the intimation was sent. But her concern is about the proof as to what intimation was sent through SMS. When it is admitted by the appellant herself that the intimation was sent via SMS, it does not warrant any documentary proof since there ought not have been any other communication between them except intimating the arrest of the appellant to her relative and that this concern was not raised anywhere in the cross examination of any of the witnesses. He would further submit that Ex.P.5/detailed report is also a genuine one. A bear perusal of Ex.P.5 itself would show that the intimation was received at 8.30 hrs. and the same was duly intimated to the Superior Officer and permission was obtained at 8.45 hrs. and the time of commencement was 11.30 hrs. Ex.P.3 is the Seizure Mahazar which clearly bears the signature of the witness. Therefore, the prosecution substantiated the case that upon secret information, the respondent police intercepted the appellant and recovered contraband and subsequently, arrested the appellant and also completed all the formalities meticulously without any deviation. The prosecution has proved its case beyond reasonable doubt and the trial Court rightly appreciated the evidence and convicted the appellant.



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Therefore, there is no merit in the appeal and the appeal is liable to be set aside.

9. Heard the learned counsel for the appellant and the Additional Public Prosecutor appearing for the respondent police and perused the materials on record.

10. In order to substantiate the case of the prosecution, on the side of the prosecution, totally as many as 7 witnesses were examined as P.W.1 to P.W.7 and 13 documents were marked as Ex.P.1 to Ex.P.13 besides 3 material objects were exhibited.

11. The evidence of P.W.1 clearly shows that based on a secret information, P.W.1 prepared Ex.P.1/secret information report and sent the same to the Inspector of Police/P.W.6 and after obtaining the permission from P.W.6, proceeded to the spot along with her police party and intercepted the appellant and found the appellant was in possession of contraband. Thereafter, seized the same under seizure mahazar Ex.P.3 and arrested the appellant and completed the formalities.



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12. P.W.2/Head Constable, has clearly spoken about the arrest of the appellant and recovery of contraband from the appellant.

13. P.W.6/Inspector of Police has clearly deposed that on 08.09.2020, P.W.1 intimated him about the secret information under Ex.P.1 and obtained permission to proceed further along with police party with necessary equipments and thereafter, in the evening about 7 p.m., came to police station, registered the FIR and submitted the detailed report along with case property.

14. The main contention of the learned counsel for the appellant is that the FIR in Crime No.46 of 2020 dated 08.09.2020 was registered at 19.00 hrs., whereas before the registration of the FIR, the said Crime Number was mentioned in the arrest intimation form which was prepared at the occurrence place at 14.30 hrs. Normally, in NDPS Act Cases, the prosecution would proceed immediately to the spot on the basis of secret information and soon after completing the operation, they would comply with all the formalities in the occurrence place itself and they would send



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intimations to the officers incharge of the police station and get the FIR Number from the FIR Register and would mention the FIR number in the materials prepared by them at the occurrence place and there is nothing wrong in that. Merely because the FIR/Crime Number is mentioned in the arrest memo or any other document prepared at the spot, it is not a sole ground to discard the case of the prosecution. The learned Additional Public Prosecutor also brought to the notice of this Court that there are 4 previous cases against the appellant for Immoral Traffic (Prevention) Act.

15. The further contention of the learned counsel for the appellant is that the trial Court convicted the appellant only based on the confession statement. He would submit that any statement recorded by the police including confession statement is not an admissible evidence. The Hon'ble Supreme Court has recently held in the case in ***Tofan Singh v. State of Tamil Nadu reported in (2021) 4 SCC 1*** that the confession statement recorded by the Investigating Officer in NDPS Act case, is not an admissible evidence and based on the confession statement,



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conviction cannot be given and therefore, based on the confession statement recorded from the appellant under Section 67 of NDPS Act, above conviction cannot be recorded. No doubt, the Supreme Court can declare law. Any statement made before the enforcement official in NDPS Act Case, is inadmissible and only based on the statement recorded under Section 67 of NDPS Act, the accused cannot be convicted. However, when there are sufficient other materials available, then the conviction can be recorded.

16. Further it is settled proposition of law that mere defects on the part of the prosecution is not a sole ground to acquit the accused or to thrown away the entire prosecution case.

17. This Court being an appellate Court and final Court of fact finding, has to necessarily re-appreciate the entire evidence and to give its findings independently. This Court re-appreciated the entire materials available on record.



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18. Though the learned counsel for the appellant vehemently contended that the trial Court convicted the appellant only based on the confession statement, as already stated that as per the decision of the Hon'ble Supreme Court supra, based on mere confession, conviction cannot be recorded. Apart from the confession statement, there are material evidence available against the appellant that the appellant was in conscious possession of the contraband. Therefore, the trial Court rightly convicted the appellant.

19. From the evidence of P.W.1/Sub Inspector of Police, P.W.2/Head Constable, P.W.6/Inspector of Police and Ex.P.1/Secret Information Report, Ex.P.2/consent letter for search, Ex.P.3/Seizure Mahazar, Ex.P.4/FIR, Ex.P.5/detailed report, this Court finds that except some technical defects, there is no material defects which would go into the route of the prosecution. This Court does not find any perversity, infirmity or illegality in the appreciation of evidence. Therefore, there is no reason to interfere with the case of the prosecution and there is no merit in the appeal and the appeal is liable to be dismissed.



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20. Accordingly, this Criminal Appeal is Dismissed. Consequently, connected Miscellaneous Petition is closed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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Index:Yes/No



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To

1. The Special Court under EC Act/NDPS Act, Coimbatore,
2. The Inspector of Police
NIBCID
Coimbatore District
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.

**Pre-Deliver Order in
Criminal Appeal No.1046 of 2022**

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