



Crl.A.No.907 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2022

PRONOUNCED ON : 24.11.2022

CORAM:

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

Crl.A.No.907 of 2019

Abdul Adam

...Appellant

-Vs-

The Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
Chennai.

... Respondent

Prayer: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, to set aside the judgment dated 25.11.2019 made in C.C.No.85 of 2017 passed by the learned I Additional Special Court for exclusive trial of cases under NDPS Act, Chennai.

For Appellant : Mr.P.G.Perumalpandian

For Respondent : Mr.N.P.Kumar

Special Public Prosecutor (DRI)



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ORDER

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This Criminal Appeal is directed as against the judgment passed in C.C.No.85 of 2017 dated 25.11.2019 on the file of the I Additional Special Judge for exclusive trial of cases under NDPS Act, Chennai, thereby convicting the appellant for the offence under Section 8(c) r/w 21(c) of NDPS Act

2. The case of the prosecution is that on 02.05.2017 at about 17.35 hours, based on a secret information, the respondent obtained permission to proceed further on that information, and formed a team and went to the Domestic Terminal of Chennai Airport at around 5.00 p.m. They mounted surveillance at the exit gate of Domestic Terminal and on noticing the information displayed in the board that a Flight from Kolkata to Chennai AI 765 had landed at Chennai Airport, started verifying the passengers, who came out of the exit gate. It was found that the passenger who had travelled in seat No.31C is Abdul Adam Samsu and conducted enquiry on him. After enquiry they confirmed his identity and at the time of enquiry the accused carried Black colour back pack and one Flight way brand Trolley bag. Though, the said person denied the possession of Narcotic drug, on search, he was found in possession of parcel from the trolley bag. On examination, it was found that it is a parcel containing light brown colour powdery substance in a polythene cover.



When the same was tested with Field Test Kit, it tested positive for Narcotic drug (Heroin) and the said substance was seized after taking three samples.

After completion of all the formalities as contemplated under the NDPS Act, he was arrested. Hence the complaint. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.85 of 2017.

3. In order to bring home the charges, the prosecution had examined PWs1 to 5 and marked Exs.P1 to 45 and also produced M.Os1 to 5 and on the side of the appellant no one was examined and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the appellant guilty for the offence under section 8(c) r/w 21(c) of NDPS Act and sentenced him to undergo ten years rigorous imprisonment and also imposed fine of Rs.1 lakh in default to undergo one year rigorous imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the prosecution failed to examine any independent witness to prove its case. The



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person who received information, recorded the information and obtained permission were not examined by the prosecution and it is fatal to the case of the prosecution. He would further submit that the officer, who registered FIR was also under the team of seizure. The documents marked by the prosecution did not contain any date and under the NDPS Act, there is no provision to issue summons. However, PW2 issued summons and it is fatal to the case of the prosecution. The contraband seized from the accused did not contain any quantitative analysis of the sample determined for want of facilities therefore, the contraband is not coming under the commercial quantity. Therefore, the prosecution failed to prove its case beyond any doubt and he prayed for acquittal of the accused.

6. Per contra, the learned Government Advocate (Crl. Side) submitted that in order to bring home the charges PWs1 to 5 were examined. PW1 deposed that the manner in which the search was directed and the contraband was seized from the accused. The prosecution also followed all the procedures contemplated under the NDPS Act. The information received was marked as Ex.P1, on the said information, the accused was found in possession of the contraband and after taking samples as P1S1, P1S2 and P1S3 the remaining Heroin was marked as Ex.P1. The trolley bag was marked as Ex.P2. All the



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said articles were seized under Ex.P2, Mahazar. PW2, the Intelligence Officer, who had participated in the search proceedings issued summons under Section 67 of NDPS Act to the accused and on the said summons, the accused appeared before PW2 and his Voluntary Statement was recorded in his own handwriting. It was marked as Ex.P11. Thereafter, PW2 arrested the accused and remanded him to judicial custody. The Arrest Memo was marked as Ex.P12. The chemical examiner was examined as PW4, she conducted chemical analysis and found that the sample tested positive for Diacetyl Morphine (Heroin). Her report was marked as Ex.P17. PW5, had produced the properties before the Court and conducted further investigation and also conducted search in the house of the accused. Therefore, the prosecution clearly proved its case beyond any doubt and the Court below rightly convicted the appellant and it does not require any interference by this Court.

7. It is seen that on receipt of the secret information, the respondent obtained permission and went to Domestic Terminal, Chennai Airport. After arrival of the Flight from Kolkata to Chennai, PW1 and his team found the accused, who travelled in Seat No.31C and made search on him after following the due procedure as contemplated under Section 50 of NDPS Act. However, PW1 and his team found the accused in possession of contraband from his



trolley bag and not on him. Though, the offence under Section 50 of NDPS Act would not be applicable to the case on hand the respondent followed the procedure as contemplated under Section 50 while making a search on him.

8. In this regard it is relevant to rely upon the judgment reported in **(2014) 2 SCC (Cri) 563 : (2014) 5 SCC 345** in the case of State of **Rajasthan Vs. Parmanand and Another**.

The relevant portion of the above said judgment is extracted hereunder;-

" 19. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative



was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated."

9. Therefore, it does not matter whether the respondent followed the procedure as contemplated under Section 50 of NDPS Act or not. PW1, the Superintendent of NCB is a member of the team. PW2, is an Investigating Officer of NCB, he is also member of their team. Though, the person from whom the information was received was not examined by the prosecution, it is not fatal to the case of the prosecution since he was in Dubai on deputation at the time when the information was given to PW1. He had spoken about the information which was marked as Ex.P1. PW1 had spoken about enquiring of



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independent witnesses in the Magazar which was marked as Ex.P2. The signature of the independent witnesses were appended. Though the prosecution did not examine any independent witnesses, the same is not fatal case to any of the cogent and clinching evidence of PWs1 and 2. Further nothing was culled out by the appellant to discard their evidence.

10. On perusal of exhibits also revealed that on 28.04.2017, the accused had booked his tickets on both to and from between Chennai and Kolkata for his travel on 01.05.2017 and 02.05.2017 respectively. He had paid in cash for the ticket charges. He travelled to Kolkata on 01.05.2017 and he stayed at Kolkata from 01.05.2017 to 02.05.2017 and left for Chennai on 02.05.2017. Thereafter, he travelled to Chennai by Flight AI765 on Seat No.31C. PW1 deposed that when they mounted surveillance at the exit gate of Chennai Domestic Airport, the accused was checked in baggage weighing 7 Kgs. During his check, his luggage tallied and he confirmed that the luggage belong to him. Though the learned counsel for the appellant raised grounds that while the accused was in custody of PW1, the statement was recorded and therefore, it is not admissible in evidence, it is settled law that the statement under Section 67 of NDPS Act has been retracted, then its evidentiary value is reduced and then the complainant has to produce on record some independent witnesses in



support of which his voluntary statement can be discarded. However, the accused failed to retract the same at the earliest possible opportunity. He did not make any complaint with regard to the same.

11. Further, the learned counsel for the appellant vehemently contented that the quantitative analysis was not done for want of facilities and as such it is fatal to the case of the prosecution. The chemical analysis designs to determine the proportionals of components in a substance. However, in the case on hand, the contraband ,which is neither a mixture nor a preparation, with or without a neutral material, of any Narcotic Drug or Psychotropic substance. There is no need for purity test and in such case the entire quantity of Narcotic Drug/Psychotropic substance shall be taken into consideration for deciding as to whether the same is small quantity or a commercial quantity or an intermediate quantity for the purpose of conviction. Therefore, from the exhibits, it is clear that the accused went to Kolkata only to collect the Narcotic Drug (Heroin) and when he returned to Chennai, he was consciously in possession of Narcotic Drug (Heroin). Therefore, the trial Court rightly convicted the accused and this Court finds no infirmity or illegality in the order passed by the Court below.

12. Accordingly, the criminal appeal stands dismissed.



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24.11.2022

Index : Yes/No
Speaking/Non Speaking order
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To

- 1.The I Additional Special Court for exclusive trial of cases under NDPS Act,
Chennai.
- 2.The Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
Chennai.

G.K.ILANTHIRAIYAN. J.

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Pre-delivery order made in
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24.11.2022