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Crl.A.No.448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

DELIVERED ON : 20.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.448 of 2022

Vasanthi

... Appellant

Vs.

State Rep. by
The Inspector of Police
Perundurai Police Station
Erode District
Crime No.409 of 2018

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 08.04.2022, passed by the learned Additional District Judge/Presiding Officer, Special Court under E.C. Act/NDPS Act, Coimbatore, in C.C. No.9 of 2020.

For Appellant : Mr.C. Ramkumar

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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JUDGMENT

This criminal appeal is filed against the judgment dated 08.04.2022, passed by the learned Additional District Judge/Presiding Officer, Special Court under E.C. / NDPS Act, Coimbatore, in C.C. No.9 of 2020.

2. The appellant is the accused in C.C.No.9/2020 and she is convicted under Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances At, 1985 (in brief NDPS Act) and sentenced to undergo Rigorous Imprisonment for 6 years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.

3. The case of the prosecution flows as follows.

3.1. The police team headed by Sugavanam (P.W.5), Inspector of Police, Perundurai Police Station and comprising of Special Sub Inspectors of Police, Ashok Kumar, Parameswaran and Head constable Ammukutti (P.W.1) and Kalpana (P.W.2), based on a tip off, proceeded with all equipments on 24.07.2018 at about 8 a.m. to a tea shop in Kasibillapalayam,



west of Sipcot J.J.Company and spotted the accused Vasanthi with a blue colour bag. An unknown male buying from her made good his escape on spotting them in the police jeep.

3.2 The accused Vasanthi was apprehended and explained her right to be checked before a Magistrate or a gazetted Government official for which she preferred to be checked by a police woman constable. The consent was obtained in writing from her (Ex.P3). She was taken to her tea shop and her blue bag was opened in her presence and 1.25 kg of ganja was found in the bag. It was seized in the presence of independent witnesses Dhandapani (P.W.4) and Selvam (not examined) under the cover of a seizure mahazar (Ex.P4). Two samples of 100 gms each were also taken from the contraband, packed and sealed as M.O.1 (series) in the presence of the same witnesses. Cash amount of Rs.24,000/- (sale proceeds of ganja) was also recovered from her besides 10 small polythene covers (M.O.5) all from the blue bag (M.O.3). The remaining ganja (M.O.2) was also seized and sealed in a cover. The accused Vasanthi was arrested and later remanded to judicial custody.



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3.3. Based on the written complaint by the Inspector of Police Sugavanam (P.W.5), FIR (Ex.P9) was registered by him in Crime No.409/2018 on the same day at 11 a.m. under Sections 8(c) and 20(b)(ii)(B) of NDPS Act 1985 against the accused Vasanthi. The seized M.Os were sent to the Magistrate Court on the same day with form No.91 (Ex.P7) by Sugavanam, Inspector of Police (P.W.5). A request letter (Ex.P10) was sent to the Additional District Judge, Special Court of EC Act Cases, Coimbatore, for sending the samples of 100 gm of contraband seized for chemical analysis. Tmt.Arul Nayaki (P.W.3), Scientific Officer of the Forensic Department, Coimbatore, submitted a report (Ex.P2), which concludes that the samples contained ganja. This chemical analysis was performed on the samples seized and sent by the Additional District Judge of Special Court for EC Act. The amount of Rs.24,000/- cash seized from the accused was remitted in the bank account in FDR on 23.06.2020. The photos of the currency seized is Ex.P6 series and the FDR is Ex.P5. Selvaraj (P.W.6), Inspector of Police, Chennimalai Police Station took up investigation as per proceedings dated 29.03.2019 of the Deputy Superintendent of Police, Perundurai, examined Tmt.Arul Nayaki (P.W.3)



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and recorded her statement and also examined the other witnesses before concluding the investigation and filing the final report under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act 1985 before the Additional District Judge/Presiding Officer, Special Court under E.C. Act/NDPS Act, Coimbatore.

3.4. The prosecution examined P.W.1 to P.W.6 and marked Ex.P1 to Ex.P10 on their side. M.O.1 to M.O.5 also were marked.

3.5. As already discussed P.W.1 Tmt.Ammukutti and P.W.2 Tmt.Kalpana were the women constables and they narrated the incident right from the police team proceeding to the tea shop in Kasibillapalayam to the seizure of ganja from the accused Vasanthi. Tmt.Arul Nayaki (P.W.3), Scientific Officer, Forensic Department, deposed about the Chemical analysis of the samples of contraband seized and her report on it. P.W.4 Dhandapani is an independent witness and he has deposed that he was on the way to his office when he witnessed the incident of apprehending the accused Vasanthi, finding her in possession of the contraband, taking her



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consent in writing of the search, seizing the contraband, making samples and arresting her. Thiru.Sugavanam (P.W.5), Inspector of Police, Perundurai Police Station, deposed on the receipt of a tip off, going to the place of occurrence with a team of constables and Sub Inspectors, along with the required equipments, apprehending the accused and taking consent from her for the checking in the presence of independent witnesses and then seizing the contraband in her possession, making samples of 100 gm each and forwarding the same to the court along with the cash of Rs.24,000/- seized from the accused. P.W.6, Selvaraj, Inspector of Police of Chennimalai Police Station deposed that he took up investigation and examined all the witnesses before filing the final report. All the witnesses withstood the testimony of cross examination.

3.6. After completion of the evidence on the side of the prosecution, the incriminating evidence against the accused was read over to the accused under Section 313 Cr.P.C who denied of having committed any offence and also gave a written statement that Sugavanam (P.W.5) along with other police went to her tea shop and took Rs.24,000/- from the cash counter and



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foisted a false case under NDPS Act. She had no oral evidence on her side.

The trial court found her guilty Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced her to undergo Rigorous Imprisonment for 6 years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.

3.7. This appeal is against the conviction and punishment.

4. Mr.C.Ramkumar, learned counsel for the accused/appellant would contend that except for P.W.4 all others were official witnesses and that when P.W.1, P.W.2 and P.W.5 had deposed that the checking, seizure and arrest of the accused took place in the tea shop while P.W.4 deposed that it was in her house. Moreover, in NDPS cases, the complainant cannot be the Investigation Officer whereas in the instant case P.W.5 Sugavanam was the complainant and Investigation Officer too. Thus the case of the prosecution was weak and the accused is liable to be acquitted.



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5. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor argued that anyone in possession of a narcotic substance cannot be let free and that there is no valid reason why the accused should be picked up by P.W.5 and a false case be foisted upon her as claimed by the accused. He also relied on the content of Section 35 of NDPS Act which shifts the burden on the accused to prove that she was not in conscious possession of the contraband. Thus, according to him the trial court was right in its conclusion.

6. The learned counsel for the accused has a weak premise. One aspect is that independent witnesses were not examined and second aspect is that the case was foisted on the accused. It is well settled that credibility of witnesses need to be tested based on their truthfulness. Merely because a witness is a police official it cannot be brushed aside or disbelieved. This Court is convinced that what has been stated by the Police Officials as P.W.1, P.W.2 and P.W5 has a ring truth in it and can be relied upon. There was no previous enmity or reason for P.W.5 to falsely implicate the accused and no such plea has been taken by the accused. The learned counsel for the accused had an opportunity to cross examine the prosecution witnesses to



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elicit the truth. No such suggestions were made to the witnesses. The police in the instant case had followed all the mandatory requirements of NDPS Act before arresting the accused. In such circumstances, I do not find any merit in the appeal.

7. In the result.

- i. the Criminal Appeal is dismissed.
- ii. The judgment dated 08.04.2022, passed by the learned Additional District Judge/Presiding Officer, Special Court under E.C. Act/NDPS Act, Coimbatore, in C.C. No.9 of 2020, is confirmed.
- iii. The appellant/accused in C.C. No.9 of 2020, shall surrender before the trial court, within 15 days from the date of receipt of a copy of this order, failing which, the Trial Court shall take steps to secure her for undergoing the sentence imposed on her.

20.09.2023

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Index : yes/no

Speaking /Non speaking Order

9/11



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1. The Additional District Judge/Presiding Officer,
Special Court under E.C. Act/NDPS Act, Coimbatore
2. State Rep. by
The Inspector of Police
Perundurai Police Station
Erode District
Crime No.409 of 2018
3. The Additional Public Prosecutor
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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