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Criminal Appeal Nos.463 & 730 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal Nos.463 & 730 of 2017

Crl.A.No.463 of 2017

Y.V.Nagaraj

S/o.Y.Subba Rao

... Appellant/Accused

Vs.

State by

Intelligence Officer,

Narcotics Control Bureau,

Chennai Zone, Chennai.

(N.C.B F.No.48/1/3/95-NCB/MDS)

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374 (2) of the Code of Criminal Procedure r/w 36(B) of Narcotic Drugs and Psychotropic Substances Act against the judgment passed by Special Judge, I Additional Special Court for NDPS Act Cases, Chennai - 600 104, in C.C.No.418 of 1995, dated 27.07.2017.

For Appellant : Mr.B.Kumar, Senior counsel
for Mr.R.Rajan

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor



Criminal Appeal Nos.463 & 730 of 2017

Crl.A.No.730 of 2017

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Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai.

... Appellant/Complainant

Vs.

Y.V.Nagaraj
S/o.Late Y.Subba Rao

... Respondent/Accused

Prayer : Criminal Appeal filed u/s.377(2) of the Code of Criminal Procedure against the judgment passed by Special Judge, I Additional Special Court for NDPS Act Cases, Chennai - 600 104, in C.C.No.418 of 1995, dated 27.07.2017.

For Appellant : Mr.N.P.Kumar
Special Public Prosecutor
For Respondent : Mr.B.Kumar, Senior counsel
for Mr.R.Rajan

COMMON JUDGMENT

As both the appeals arise out of one and the same judgment, they are considered and decided by this common judgment.



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2. Crl.A.No.463 of 2017 has been filed by the appellant [A2] against the judgment and order passed by the Special Judge, I Additional Special Court for NDPS Act Cases, Chennai - 600 104, in C.C.No.418 of 1995, dated 27.07.2017, convicting and sentencing the appellant in the following manner:

Sl. No.	Convicted for offence u/s.	Sentence
1.	Section 8(c) r/w 22(b) of NDPS Act, 1985	10 years rigorous imprisonment and fine of Rs.1,00,000/-, in default, to undergo 2 years imprisonment.
2.	8(c) r/w 23(b) of NDPS Act, 1985	10 years rigorous imprisonment and fine of Rs.1,00,000/-, in default, to undergo 2 years imprisonment.
3.	8(c) r/w 29 of NDPS Act, 1985	10 years rigorous imprisonment and fine of Rs.1,00,000/-, in default, to undergo 2 years imprisonment.

The above sentences were ordered to run concurrently.

3. Crl.A.No.730 of 2017 has been filed by Narcotic Control Bureau [hereinafter referred to as 'NCB'] questioning the judgment and order passed by Special Judge, I Additional Special Court for NDPS Act Cases, Chennai - 600 104, in C.C.No.418 of 1995, dated 27.07.2017, insofar as the sentence



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imposed against the respondent [A2] for various offences and seeking for enhancement of sentence.

4. The NCB filed a complaint on 24.07.1995 alleging that a communication was received by the Drug Liaison Officer, Customs and Excise, at Mumbai from the South African Police to the effect that a consignment of clear bulbs exported by M/s.K.J.Exports, Chennai, contained 20,34,000/- Methaqualone tablets and the same was seized by the authorities in the Kingdom of Swaziland. Based on this communication, an investigation was conducted and documents were seized and statements were recorded from various persons and it came to light that A1 had procured tablets and A2 and A3 had floated a fictitious company in the name and style of M/s.K.J. Exports at Chennai and A2 to A4 stored the tablets in their premise in Kotturpuram. They packed these tablets in the clear bulbs and the consignment was exported. After the consignment reached South Africa, the same was tested by the South African Police and it was confirmed that the consignment contained 20,34,000/- Methaqualone



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tablets. Since this drug is a psychotropic substance falling under the Narcotic Drugs and Psychotropic Substances Act [hereinafter referred to as 'NDPS Act'], the complaint was filed against four accused persons. Out of these four accused persons, A1 absconded and was not traced and A3 and A4 died during trial. Hence, the case was effectively conducted only as against the appellant [A2].

5. After the complaint was taken cognizance by the Court below u/s.36(A)(d) of the NDPS Act, copies were served on the accused persons u/s.208 Cr.P.C. On finding *prima facie* materials, charges were framed against A1 to A4 u/s.8(c) r/w 22 and 23 of the NDPS Act. Separate charges were also framed against A2 to A4 u/s.29 of the NDPS Act. When the charges were put to the accused persons, the same were denied. Since A1 was absconding, the case was split up and an additional charge u/s.8(c) r/w 29 of the NDPS Act was framed against A2 to A4. Due to the demise of A3 and A4 during the pendency of trial, the charges abate against them.

6. The prosecution examined PW-1 to PW-9 and marked Exs.P1 to



P52. The incriminating evidence that was gathered during the course of trial was put to the appellant [A2] when he was questioned u/s.313(1)(b) Cr.P.C and he denied the same as false.

7. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has made out a case beyond reasonable doubts and accordingly, convicted and sentenced the appellant [A2] in the manner stated supra. Aggrieved by the same, the appellant[A2] has filed CrI.A.No.463 of 2017 and the NCB has filed CrI.A.No.730 of 2017 seeking for enhancement of sentence.

8. Heard Mr.B.Kumar, learned Senior Counsel, appearing for appellant [A2] and Mr.N.P.Kumar, learned Special Public Prosecutor, appearing for NCB.

9. Learned counsel appearing on either side made elaborate



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submissions touching upon the merits of the case by pointing out to the evidence of the witnesses and the documents that were relied upon by the prosecution.

10. Before delving upon the issues that were raised on either side, this Court wanted to ascertain as to whether the trial Court had dealt with all the issues raised on merits. If the trial Court had dealt with all the issues and had come to a conclusion, this Court would have proceeded further to deal with this appeal on its own merits after re-appreciating the oral and documentary evidence available on record. However, on carefully going through the judgment of the trial Court, it is seen that the trial Court has reached a final conclusion purely based on the confession made by the appellant u/s.67 of the NDPS Act by relying upon the judgment of the Apex Court in *Kanhaiyalal v. Union of India [(2008) 4 SCC 668]*. Accordingly, the appellant has been convicted and sentenced for various offences under the NDPS Act.

11. Learned counsel for the appellant [A2] and learned Special Public



Prosecutor appearing on behalf of NCB touched upon various documents relied upon by the prosecution and also the oral evidence of the witnesses and had put forth their contentions, apart from the confession recorded from the appellant u/s.67 of the NDPS Act. In fact, the trial Court had also recorded the various contentions that were put forth by learned counsel appearing on either side. However, the judgment confined itself only to the confession recorded u/s.67 of the NDPS Act.

12. There was a subsequent development after the judgment was passed in the year 2017. The Larger Bench of the Apex Court in ***Tofan Singh v. State of Tamil Nadu [(2021) 4 SCC 1]*** re-visited the entire law on the issue and in particular, decided the vexed question as to whether a conviction can be based solely on the confession recorded u/s.67 of the NDPS Act and it was answered at paragraph No.158 as follows:

"158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken



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into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

13. In the light of the above development, the judgment passed by the trial Court purely based on the confession statement by relying upon the judgment in *Kanhaiyalal* [supra], becomes unsustainable since it was overruled and on this ground alone, the judgment passed by the trial Court is liable to be set aside and the matter has to be necessarily remanded back to the trial Court to deal with all the other issues on merits and render its findings.

14. This Court consciously did not line up the other grounds that were raised on either side touching upon the merits of the case and render any finding since it will have a bearing and it will be a stumbling block for the trial Court to independently deal with the issues on its own merits and in accordance with law.

In the result, these criminal appeals are disposed of in the following



manner:

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- (a) the judgment and order passed by Special Judge, I Additional Special Court for NDPS Act Cases, Chennai - 600 104, in C.C.No.418 of 1995, dated 27.07.2017, is hereby set aside and the matter is remanded back to the file of the trial Court with a direction to deal with all the issues raised on either side, on its own merits and in accordance with law;
- (b) the trial Court shall not permit either of the parties to re-open the evidence or file any other applications and the matter is remanded back to the file of the trial Court only with a view to enable the trial Court to hear both sides finally on all the issues with the available materials and deliver the judgment on its own merits and in accordance with law. This exercise shall be completed by the trial Court within a period of four (4) months from the date of receipt of a copy of this order;
- (c) the appellant in Crl.A.No.463 of 2017 has undergone sentence for more than eight years and since the judgment of the trial Court is set aside and the matter is remanded back to the file of the trial Court, this Court deems it fit to enlarge the appellant [A2] on bail subject to the following



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conditions:

- (i) the appellant [A2] shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the trial Court;
- (ii) the appellant [A2] shall report before the trial Court on all hearing dates and on every Monday at 10.30 a.m. till the final judgment is passed by the trial Court;
- (iii) if the appellant [A2] attempts to delay the proceedings and/or fails to comply with the conditions imposed by this Court, it is left open to the trial Court to insist upon the presence of the appellant [A2] and remand him to custody as laid down by the Honourable Apex Court in *State of Uttar Pradesh v. Shambhu Nath Singh (JT 2001 (4) SC 3191)*.

(d) the entire original records have been sent to this Court. Since the matter is remanded back to the trial Court, the Registry is directed to immediately send back the records to the trial Court.

29.03.2023

Index : Yes/No,
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
gm

N. ANAND VENKATESH, J



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gm

To

- 1.The Special Judge,
I Additional Special Court for NDPS Act Cases,
Chennai - 600 104
- 2.The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zone, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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(1/2)