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Crl.A.Nos.771 of 2017 & 615 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 19.06.2023]

[Pronounced on : 20.09.2023]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.Nos. 771 of 2017 & 615 of 2018
& Crl.M.P.No.12947 of 2021

Mohammed Ibrahim @ Raja

... Appellant/accused-2 in Crl.A.No.771 of 2017

Mohamed Rabeek

... Appellant/accused-3 in Crl.A.No.615 of 2018

.. Vs ..

State by

Intelligence Officer

NCB

Chennai Zonal Unit

Chennai – 600 090

(R.R. No.11/14

NCB F.No.48/1/6/2014 NCB, Madras)

... Respondent/complainant in Crl.A.No.771 of 2017

State, represented by

The Intelligence Officer,

Narcotics Control Bureau,

Central Zone Unit

Chennai – 600 090.

(NCB.F.No.48/1/06/2014 NCB.MDS)



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... Respondent/complainant in Crl.A.No.615 of 2018

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PRAYER in Crl.A.No.771 of 2017: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Principal Special Judge for EC Act and NDPS Act in C.C.No.5 of 2015 dated 24.10.2017 and acquit the appellant.

PRAYER in Crl.A.No.615 of 2018: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed in C.C.No.5 of 2015 dated 24.10.2017 passed by the Principal Special Judge under NDPS Act, Chennai to secure the ends of justice.

For Appellant,
in Crl.A.No.771 of 2017:Mr.R.Vijayakumar
in Crl.A.No.615 of 2018:Mr.R.Sankarasubbu

For Respondent
In both Crl.A.'s :Mr.N.P.Kumar
Special Public Prosecutor (NCB cases)

COMMON JUDGMENT

Convicted accused 2 & 3 are the appellants in the respective Crl.A.Nos.771 of 2017 & 615 of 2018.

2. 3rd accused is the appellant in Crl.A.No.615 of 2018, wherein the learned Principal Special Judge under NDPS Act, Chennai has



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convicted the appellant under Section 8(c) r/w. 29, 8(c) r/w. 21(c), 8(c) r/w. 22(c) and 8(c) r/w. 28 of NDPS Act and sentenced to 10 years of R.I. and to pay a fine of Rs.1,00,000/- (One Lakh only) each count and total Rs.4,00,000/- (Rupees Four Lakhs) in default 2 ½ years of R.I. each and the sentences to run concurrently.

3. 2nd accused is the appellant in Crl.A.No.771 of 2017, who was convicted by the learned Principal Special Judge under NDPS Act, Chennai for offence punishable under Section 8(c) read with Section 29; 8(c) read with Section 21(c); 8(c) read with Section 22(c); 8(c) read with Section 28 and 8(c) read with Section 27(A) of Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985 and sentenced to undergo R.I. for 15 years for each offence and to pay fine of Rs.1,50,000/- each in default to undergo R.I. for 2 ½ years and the sentences to run concurrently vide judgment dated 24.10.2017 in C.C.No.5 of 2015. A4 was acquitted by the trial Court and it is reported that A1 is dead.

4. From the date of the arrest, both the accused appellants are in jail.



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5. The case of the prosecution in brief is that, P.W.1 Intelligence Officer Vivek Anand is said to have received information while he was in his office around 6 p.m. on 18.07.2014 that the appellant herein was indulging in trafficking of heroin, and methamphetamine between Chennai and Kuwait with the help of co accused Seshadri Rajendran @ Prabu Seralathan (A1 in C.C. No.5 of 2015), Mohamad Rabiq (A3 in C.C.No.5 of 2015) and Vijayakumar (A4 in C.C.No.5 of 2015 - acquitted from all the charges by the trial court).

6. Further he is said to have received the information that the above persons planned to send the drugs to Kuwait by Air Arabia Flight No. G9 0472 on 19.07.2014 at 4.30 a.m. After receipt of the information, the NCB Officials went to the Anna International Airport on the night of 18.07.2014 and intercepted the 1st accused, Seshadri Rajendran the alleged carrier in the customs area at 12.30 a.m. on 19.07.2014 and found Trolley bag. In the said trolley bag they found heroin weighing about 1.160 kg, and methamphetamine weighing 1.020 kgs. Two independent witnesses Senthilkumar and Sureshkumar Air Arabia Security Officers are said to have witnessed the search and seizure for the search and seizure and thereafter it was completed by NCB Officials and also have



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taken this appellant and the co accused Seshadri Rajendran, Mohamad Rabiq and Vijayakumar from the entrance of the airport and there after investigated the matter and filed the complaint.

7. The trial court also convicted Seshadri Rajendran and Mohamad Rabiq for an offence punishable under sections 8(c) read with 29, 8(c) read with 21(c), 8(c) read with 22(c) and 8(c) read with 28 of the NDPS Act and sentenced to undergo R.I. for ten years under each section and to pay fine of Rs.1 lakh under each Section in default to undergo R.I. for 2 ½ years. And hence, these appeals.

8. The learned counsel for the appellant in both the cases submitted that the information received by the PW.1 itself is false case because the recital of the information in Ex.P1 cannot be true, as it is mentioned that the appellant along with other two accused would come near gate No.4 of the Inter-National departure to meet A1 which is unnatural. The alleged seizure of M.O.1 & M.O.2 are not trust worthy. The alleged statement under Section 67 of the NDPS Act is not in the presence of independent witnesses.

9. Mr.N.P.Kumar, learned counsel for the respondent/prosecution



made his submissions in support of the judgment of the trial Court.

10. The main contention of Mr.Sankarasubbu, learned counsel appearing for the appellant is that the trial Court ought to have rejected the statement under Section 67 of the NDPS Act, since the arrest is illegal. Consequently, any statement said to have been recorded under Section 67 of NDPS Act is also illegal and further contended that the plea of the 3rd accused that he came down to India only on 04.06.2014 and Ex.D.1 marked by the accused Viz., passport is not taken into consideration by the trial Court.

11. Heard both sides and perused the records.

12. The points for consideration are,

- i. *Whether the conviction of the 2nd accused for the charges under Sections 8(c) read with Section 29; 8(c) read with Section 21(c); 8(c) read with Section 22(c); 8(c) read with Section 28 and 8(c) read with Section 27(A) of Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985 is sustainable under law?*
- ii. *Whether the conviction of the 3rd accused for the charges under Section 8(c) r/w. 29, 8(c) r/w. 21(c), 8(c) r/w. 22(c) and 8(c) r/w. 28 of NDPS Act is sustainable under law?*
- iii. *Whether the sentence passed against 2nd accused is exorbitant?*
- iv. *Whether the sentence awarded to the 3rd accused is excessive?*



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13. From the records as well as the evidence of prosecution witnesses PW.1 to PW.7 and exhibits Ex.P1 to Ex.P.59, this Court finds the case of the prosecution is, the petitioner/A3 along with Sheshathri Rajendran @ Prabhu Seralathan, S/o. Rajendran (A1), Mohamed Ibrahim @ Raja/A2 and Vijayakumar @ Viji/A4 entered into a criminal conspiracy to procure, possess, transport, export and made an attempt to illegally export from India to Kuwait, the seized 1.160 Kg of Heroin and 1.020 Kg of Methamphetamine at Customs examination area of Chennai Anna International Airport and as they committed the offences contravening the provision of Section 8(c) r/w. Sections 21, 22, 23, 28 and 29, they are punishable under Sections 21(C), 22(C), 23(C), 28 and 29 of NDPS Act and were arrested and remanded to custody.

14. After completing the investigation, the complaint was filed before the Special Court for NDPS Act cases at Chennai, against accused Nos.1 to 3 and the same was taken on file in C.C.No.5 of 2015. After framing the charges, seven witnesses were examined, 59 exhibits and 10 material objects were marked.

15. After going through the evidence and documents, the trial



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Court found the petitioner/A3 and A1/Sheshathri Rajendran guilty of offences under Sections 8(c) r/w. 29, 8(c) r/w. 21(c), 8(c) r/w. 22(c) and 8(c) r/w. 28 of NDPS Act and sentenced them as stated above. Hence, the appeal.

16. In this case, from the evidence of PW.1, the seized contraband is a commercial quantity Viz., 1.160 Kg of Heroin and 1.020 Kg of Methamphetamine.

17. On a perusal of records, it is seen that the charges against the petitioner/A3 are under Sections 8(c) r/w. 29, 8(c) r/w. 21(c), 8(c) r/w. 22(c) and 8(c) r/w. 28 of NDPS Act. After trial, A4 was acquitted by the learned Principal Special Judge, Chennai. On information, the NCB officers went to Anna International Airport, apprehended A1 and recovered the contraband. On enquiry of A1, the involvement of A2 to A4 was ascertained and A2 to A4 were also brought inside the Airport by the NCB officials and hence, the learned Principal Special Judge, framed the charges against the accused as stated above.

18.(a) Regarding the recovery of contraband and the seizure of contraband, it is seen that in the trolley bag brought by the Air Arabia



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staff, the NCB officers found the luggage tag bearing number G90514656868, wherein the name of A1 is printed. The luggage tag is pasted in the Air ticket of A1 which was marked as Ex.P.5. Moreover, all the witnesses uniformly deposed that only A1 opened the bag and handed over the contraband.

18.(b) The prosecution proved the recovery through the luggage tag wherein the name of A1 is printed. It is pertinent to note that A1 had only one trolley bag and only from that bag, the contraband was seized. Therefore, it is crystal clear that the contraband was seized only from the travel bag of A1 and as per Section 35 of the NDPS Act, the burden rests upon A1 to explain how he came in to possession of the contraband and absolutely, no evidence is available on the side of A1.

19.(a) With regard to the plea raised by the appellant A2, as far as Section 50 of the NDPS Act is concerned, the prosecution has proved the right conferred under the Section 60 of the NDPS Act was explained to the accused. Further more in the instant case, the recovery of contraband is made from the trolley bag and not from the body of A1 and therefore, Section 50 of NDPS Act need not be complied with in this case.



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19.(b) It remains to be stated that A1 has carried only one luggage.

From that luggage only NCB Officers has seized the contraband, as could be seen from the document and oral evidence adduced by the parties has seems significance. It further remains to be stated that based upon the statement of the A1 recorded under Section 67 of the NDPS Act coupled with that of A2, the learned Special Judge for NDPS Act, Chennai rendered a finding that A3 contacted A2 and arranged for illegal transport of contraband by A1. That defence plea was considered in a proper prospective and after assigning the reasons, the defence plea was negated by the learned Principal Special Judge under NDPS Act, Chennai, had arrived at the overt act of A3 appears to be just and fair and the said finding is well merited and well considered and does not require interference of this Court at appellate jurisdiction.

20 (a). It is to be stated that PW.2 is examined to find out the nature of the contraband. She had issued Ex.P.15 Chemical analysis report so as to the nature of the materials list and hence, the nature of the material seized from the possession of A1 trolley bag is slates established. The Session Judge held that the part of A4 was not established by the



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prosecution and rightly accorded acquittal for A4.

20 (b). However, the present contention raised by the learned counsel for A3 is that, A3 and A4 are in parity with the charges. Hence, he ought to have been acquitted finds no ground. The finding of the trial Court is that A1 is only a carrier and A3 has arranged for the illegal transport. Actually the real beneficiaries out of this illegal export is A2 and hence, from the prosecution witnesses, the Special Judge has rightly come to the conclusion that the charges against the present appellants are proved and accordingly laid the conviction and hence, I have no hesitation to negate the contention of the learned counsel for the appellant.

21 (a). After perusing the evidence of the prosecution, I find that the PW.1 Vivekanand has deposed regarding the receipt of the information on 18.07.2014 and on submissions of the recorded information to the Superintendent and on further information, he has found the Rajendran and the other prosecution witnesses deposed regarding discharge of their official duties.

21 (b). The learned Principal Special Judge under NDPS Act,



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Chennai, had dealt with the point of non-examination of independent witnesses Senthilkumar and Sureshkumar and has categorically held that, since the recovery is effected from the trolly bag with the luggage tag bearing the name of A1, the trial Court has carefully come to the conclusion that *Makhan Singh Vs. State of Haryana* reported in (2015) 12 SCC 247, does not applicable to facts and circumstances of this case and the contraband was seized from the trolly bag of A1 and as per Section 35 of the Act, the burden rests upon the A1 to explain how this accused came into possession of the contraband.

21 (c). In the absence of any positive evidence to rebut presumption by the accused, the Special Session Judge has rightly come to the conclusion that the prosecution has proved the seizure of the contraband and further held that, since the recovery is made from trolly bag and from the body of A1, Section 50 of the NDPS Act need not be complied with and A1 carried only one luggage, from that luggage alone the NCB officials have seized the contraband and further also observed that, the remanding Magistrate had specifically mentioned in the remand report that no complaint of ill treatment. Therefore, has rightly rejected



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the contention of the learned counsel for the appellant that Section 67 of the NDPS Act statement of the A1 being obtained using force.

22. The trial Court has rightly relied upon the Section 67 of the NDPS Act statement of A1, which explains the relationship of A2 & A3 and rightly came to the conclusion that, on the instructions of Ramzan from Kuwait, A3 contacted A2 and arranged for transport of A1.

23. Therefore, it has rightly laid the conviction and held that the charges are proved and hence conviction laid by the learned Principal Special Judge under NDPS Act, Chennai does not call for any interference as the same does not suffers from any illegality or irregularity warranting interference of this Court.

24. On the point of quantum of the sentence, heard both the learned counsel as well as the learned Special Public Prosecutor for NDPS Act.

25. The learned counsel for the third accused would contend that he was convicted and sentenced to undergo 10 years and payment of fine of Rs.1 lakh for each count and in default to undergo 2 ½ years. A3 is in custody since 18.07.2015.



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26. After perusing the sentence awarded by the learned Special Sessions Judge, Chennai for the proved charge, being 10 years, which is the minimum sentence prescribed therefore, and hence this Court is not in a position to accept the plea made by the learned counsel for the appellant to show leniency on the prime sentence. Since, all the 3 charges have been proved and further, the sentence is ordered to run concurrently.

27. With regard to A3, the fine of Rs.1 lakh for 4 counts, i.e., he has to pay fine of Rs.4 lakhs and in default has to undergo sentence of 2½ years for each count.

28. Considering the period of sentence already undergone and for nearly 10 years, he is in incarceration, I am inclined to reduce the default sentence to two months for proved charges namely 2 months each for 3 charges.(2x3=6months)

29. With regard to A2, who was convicted for the offence under Section 8(C) read with 29, 8(C) read with 2(C) and 8(C) with 22(C) and 8(C) with 28 and 8(c) with 27(A) of the sentence to NDPS Act and sentenced to undergo 15 years of each offence.

30. Taking into consideration of the proved charges, I am inclined



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to reduce the sentence of rigorous imprisonment for 10 years for each charges and with the same has run concurrently and in respect of fine of Rs.1,50,000/- each in default, to undergo rigorous imprisonment for 2 1/2 years shall kept intact. However default in payment of fine amount, he has to undergo two months for each count, i.e., has to undergo in turn 8 months for payment of fine amount.

31. Accordingly, these Criminal Appeals are partly allowed to the extent indicated above. Connected Miscellaneous petition is closed.

.09.2023

mpl/nvi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citations: Yes/ No



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RMT.TEEKAA RAMAN,J.

mpl/nvi

To

1. The Principal Special Judge under NDPS Act,
Chennai
2. The Intelligence Officer
NCB,
Chennai Zonal Unit,
Chennai – 600 090.
3. The Intelligence Officer,
Narcotics Control Bureau,
Central Zone Unit
Chennai – 600 090.
4. The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.A.Nos.771 of 2017 & 615 of 2018
& Crl.M.P.No.12947 of 2021

20.09.2023