



Crl. A.(MD)No.559 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2023

Delivered on : 02.06.2023

CORAM

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

Crl. A.(MD)No.559 of 2022

Mahmood Zaffrany

... Appellant/
Accused No.2

Vs.

State by
The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.
(F.No.48/1/01/2013-NCB/MDU)

... Respondent/
Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C. r/w 36-B of NDPS Act 1985, to call for records and set aside the conviction of the appellant in C.C.No.44 of 2013 dated 09.03.2018 by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for E.C. and NDPS Act Cases, Pudukkottai by allowing this appeal.

For Appellant : Mr.C.Susi Kumar
for Mr.C.Ajaykose

For Respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor for NCB Cases



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JUDGMENT

This Criminal Appeal is directed against the judgment of conviction and sentence imposed on the appellant/second accused in C.C.No.44 of 2013 dated 09.03.2018 on the file of the Special Court for E.C. and NDPS Act Cases, Pudukkottai.

2. The case of the prosecution is that on 22.03.2013 on receipt of the reliable information, as per the instructions of the Superintendent, NCB, Trivandrum (Camp at Madurai), the Intelligence Officer Syed Sharique Omar constituted a team of officers of NCB Madurai and proceeded to the place at about 17.00 hours, that after reaching Sirukoodalpatti Bus Stop, they had arranged two persons to stand as witnesses and have proceeded to the house bearing No.4/75C, New No.791, Vairavapuram, Sirukoodalpatti, that the accused Veeramani @ Siva, on seeing the police party, tried to flee from that spot, that the team had knocked the door of the ground floor portion and the accused Kaliasammal has come out of the house, that the said Kaliasammal had taken the police party to the first floor portion and knocked the door, that the team found the presence of Masoud Mosavi/first accused and Mahmood



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Zafarani/second accused, Iranian Nationals, that the first accused lost his balance and knocked over a 10 litre glass condenser to the floor, slipped on the split liquid and banged his head against the mosaic floor injuring himself in the process, that after bringing the first accused under control, they came to know that the two Iranian individuals were illegally manufacturing Methamphetamine in that house, that the NCB team found that the room itself was looking like a laboratory, that the accused had then handed over one jute carry bag, which when opened revealed within two transparent plastic sachets containing a crystalline substance, that the Intelligence Officer drew a small quantity of the said substance from each of the plastic sachets and tested against the Drug Detection Kit and the tests answered positive for the presence of Methamphetamine, a psychotropic substance covered under NDPS Act, that the NCB has seized 5.77kgs of contraband and also other chemicals, equipments used for manufacture of Methamphetamine through Seizure Mahazar, that subsequently, the Intelligence Officer Syed Sharique Omar has issued Section 67 summons to all the three accused, that when the accused had appeared, in pursuance of the said summons, they have given voluntary statements and that thereafter, all the three accused were arrested and were remanded to judicial custody.



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3. It is further case of the prosecution that on the basis of the initial investigation and voluntary statement given by the accused 1 to 3, NCB team conducted a search of the premises in East Thane, Maharashtra in the residence of the fourth accused, that after taking the voluntary statements from the accused 4 and 5, they were arrested on 03.04.2013 and were remanded to judicial custody and that after completing the investigation, complaint came to be filed against 7 accused alleging that the accused 1 to 7 have collectively entered into criminal conspiracy at Vairavapuram, Sirukoodalpatti and such far-off places at Mumbai, Delhi and Chennai in the year 2012-2013 for the financing, procurement, possession, transportation, harbouring and the attempt to illegally traffic Methamphetamine, a psychotropic substance and thereby have collectively contravened the provisions of Sections 8(c) r/w 22(c), 25, 28, 29, 30 and Section 9(A) r/w Sections 25A, 21, 27A of NDPS Act 1985 and are punishable under Sections 22, 25, 25A, 27A, 28, 29 and 30 of NDPS Act, as amended.

4. After the receipt of the complaint, cognizance was taken in C.C.No.44 of 2013 and after the appearance of the accused, copies of the case records were given to them free of cost under Section 207 Cr.P.C.



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5. The learned trial Judge, upon perusing the records and on hearing both the sides, has framed the charges for the offences under Section 8(c) r/w Section 29 and punishable under Section 29 of NDPS Act 1985 as against the accused 1 to 5, under Section 8(c) r/w 22(c) and punishable under Section 22(c) of NDPS Act 1985 as against the accused 1 to 3, under Section 8(c) r/w 25 and punishable under Section 25 of NDPS Act 1985 as against the third accused, under Section 9(A) r/w Section 25A and punishable under Section 25(A) of NDPS Act 1985 as against the fourth accused, under Section 8(c) r/w 27A and punishable under Section 27A of NDPS Act 1985 as against the accused 3 and 4, under Section 8(c) r/w 28 and punishable under Section 28 of NDPS Act as against the accused 1, 2, 4 and 5 and under Section 8(c) r/w 30 and punishable under Section 30 of NDPS Act 1985 as against the accused 1 and 2 and the same was explained to them and on questioning, the accused pleaded not guilty and claimed to be tried.

6. The prosecution in an attempt to prove its case had examined 12 witnesses as P.W.1 to P.W.12, exhibited 103 documents as Ex.P.1 to Ex.P.103 and marked 59 material objects as M.O.1 to M.O.59. The defence have examined 4 witnesses as D.W.1 to D.W.4 and exhibited 2 documents as Ex.D.1 and Ex.D.2.



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7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 09.03.2018 finding the accused 1 to 5 guilty for the offence under Section 8(c) r/w 22(c) r/w 29 of NDPS Act, 1985 and sentenced to undergo Rigorous Imprisonment for 20 years each and to pay a fine of Rs.1,00,000/- each, in default, to undergo Rigorous Imprisonment for 3 years each; the accused 1 to 3 convicted under Section 8(c) r/w 22(c) of NDPS Act, 1985 and sentenced to undergo Rigorous Imprisonment for 20 years each and convicted the third accused for the offence under Section 8(c) r/w 22(c) r/w 25 of NDPS Act, 1985 and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 3 years and convicted the fourth accused for the offence under Section 9(A) r/w Section 25-A of NDPS Act and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default, to undergo Rigorous Imprisonment for 3 years and convicted the accused 1, 2, 4 and 5 for the offence under Section 8(c) r/w 22(c) r/w 28 of NDPS Act and sentenced to undergo Rigorous Imprisonment for 10 years each and to pay a fine of Rs.1,00,000/- each, in default, to undergo Rigorous Imprisonment for 3 years each and ordered the sentence to



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run concurrently. Aggrieved by the said judgment of conviction and sentence, the second accused has come forward with the present appeal.

8. Heard the learned counsel appearing for the appellant, the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

9. It is evident from the records that the accused 1 and 3 to 5 have earlier preferred criminal appeals in Crl.A.(MD)Nos.174 of 2018, 309 of 2020, 143 of 2018 and 219 of 2018 respectively before this Court. Similarly the appellant herein has also preferred an appeal in Crl.A.(MD)No.171 of 2018 before this Court. During the pendency of the appeals, the appellant herein has filed an affidavit before this Court alleging that in view of the Corona pandemic, the Iran Embassy has been taking steps to repatriate all Iran prisoners from India to Iran and for that purpose no appeal or case should be pending against them in any Courts of India and that he has been languishing in the prison for the past 7 years and his appeal was not disposed of, may be permitted to withdraw the criminal appeal in Crl.A.(MD)No.171 of 2018. Recording the affidavit filed by the appellant, the appeal in Crl.A.(MD)No.171 of 2018 was ordered to be dismissed as withdrawn, vide



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judgment dated 09.10.2020. A learned Judge of this Court has passed a common judgment dated 24.09.2021 in respect of the appeals filed by the accused 1 and 3 to 5 confirming the conviction passed by the trial Court, but modified the sentence imposed against the accused 1 and 3 to 5 for the offence under Section 8(c) r/w 22(c) r/w 29 of NDPS Act and under Section 8(c) r/w 22(c) of NDPS Act and was reduced to 12 years Rigorous Imprisonment each and confirmed the findings of the trial Court in convicting and sentencing the accused in respect of the other offences.

10. The appellant, by alleging that the repatriation process has not been processed by the Iran Embassy and that the appeals filed by the other four accused were already disposed of by modifying the sentence imposed on them, has filed the present appeal.

11. The learned counsel appearing for the appellant would submit that 67 statement, which was obtained by the respondent, was retracted at the earliest and therefore, the said confession statement cannot be treated as substantive evidence without any corroboration and the same cannot be the basis for conviction, that the confession statement of the appellant is exculpatory in nature and he has not admitted his guilt, that the trial Court



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erred in relying on the alleged confession statement, which was given by the co-accused, that the statements given by the co-accused have already been retracted and that therefore all those statements cannot be treated as substantive evidence without any corroboration

12. The learned counsel appearing for the appellant would further contend that no case was made out as alleged by the prosecution against the appellant, that the trial Court has failed to consider the several material discrepancies and contradictions among the prosecution witnesses, that the prosecution has miserably failed to prove the custody of the seized property, that the property that was seized did not match with the mahazar description and the same was returned by the trial Court for the same reason at the time of production, that there is absolutely no evidence to show that what was seized was produced before the trial Court and that since the link evidence with regard to the custody of the property was missing, the entire seizure got vitiated.

13. The learned counsel appearing for the appellant would further submit that the trial Court failed to consider that the mandatory provisions under Sections 42, 50, 55 and 52(A) of NDPS Act have not been complied



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and that the trial Court has failed to consider that the prosecution has completely failed to establish their case beyond reasonable doubt.

14. The learned counsel appearing for the appellant has relied on the judgment of the Hon'ble Supreme Court in ***Tofan Singh Vs. The State Of Tamil Nadu*** reported in ***2021 4 SCC 1***, in support of his objections raised with regard to 67 statement.

15. The learned Special Public Prosecutor appearing for the respondent would submit that no final report was filed under Section 173 Cr.P.C. and a complaint alone came to be filed and that even assuming that the statement under Section 67 of NDPS Act is not admissible in evidence, the prosecution has produced ample evidence to prove the recovery of contraband from the accused and the same was proved.

16. As rightly contended by the learned Special Public Prosecutor, P.W.1 to P.W.3, P.W.6 and P.W.8 would depose specifically that the contraband was recovered in the place of occurrence from the accused through the seizure mahazar and after production of the same before the jurisdictional Court, the same was sent for chemical analysis. It is further



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evident that the report has been received, wherein, it has been stated that the contraband contains Methamphetamine.

17. No doubt, as rightly pointed out by the learned counsel appearing for the appellant that there was a delay in sending the samples to chemical analysis.

18. It is evident from the records that the seized contraband was produced before the District Munsif cum Judicial Magistrate, Thiruppattur on 24.03.2013 at about 03.55 p.m. at the time of remanding the accused, that subsequently, as per the orders of the learned Judicial Magistrate, the accused and the case properties were produced before the learned Special Judge for NDPS Act Cases at 09.00 p.m. on the same day, that the learned Special Judge, while remanding the accused, returned the case properties with a direction to produce the same on the working days, that though the properties were produced again on 25.03.2013 the next day itself, the same were returned by the concerned Court for want of correct description and that subsequently, after rectification of the defects, the properties were produced on 10.04.2013 and the same were ordered to be remanded.



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19. It is pertinent to note that the Chemical Examiner-P.W.5 in his evidence would say that his office had received 6 sealed covers on 16.04.2013 and that all the seals on the sample covers were found intact and were tallied with the facsimile of the seals given in the Court's letter and Test Memo.

20. As rightly contended by the learned Special Public Prosecutor, it is clearly evident from the records that there was no tampering in the contraband and samples. Though there existed some delay in sending the contraband, the same was explained properly and as such, the objections in this regard are devoid of substance and the same is liable for rejection.

21. The learned counsel appearing for the appellant would submit that the sentence imposed by the trial Court is disproportionate, as no reason or ground was assigned for awarding maximum punishment.

22. At this juncture, it is necessary to refer Section 32(B) of NDPS Act,

“Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed



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under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:-

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;

(e) the fact that the offender belongs to organised international or any



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other criminal group which is involved in the commission of the offence; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.”

23. As rightly pointed out by the learned counsel appearing for the appellant, the trial Court has not assigned any specific reason or ground for awarding maximum sentence of 20 years Rigorous Imprisonment.

24. No doubt, the offence under NDPS Act cannot be considered as a lighter offence and it is an offence against the society as a whole.

25. At this juncture, the learned counsel appearing for the appellant, after submitting the arguments on merits, would further submit that the appellant is not challenging the conviction imposed on him and he is only pleading for modification and reduction of sentence.

26. The learned counsel appearing for the appellant would further submit that this Court in the appeals filed by the co-accused 1 and 3 to 5 modified the maximum punishment of 20 years and reduced the same to 12



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years and that since the appellant is also similarly placed the said accused, the sentence imposed on him may be reduced.

27. As already pointed out, the appellant had already undergone nearly 9 years of imprisonment. Whatever it is, as rightly contended by the learned Special Public Prosecutor, the prosecution through ample evidence had established the involvement of the appellant in the occurrence alleged.

28. On considering the entire evidence and the arguments advanced and taking note of the submission made by the learned counsel appearing for the appellant that they are not challenging the conviction, this Court has no hesitation to hold that the findings recorded by the trial Court are liable to be confirmed, but at the same time, considering the fact that the appellant, who is an Iranian National, had already undergone nearly 9 years Rigorous Imprisonment and also taking note of the judgment of this Court in modifying and reducing the punishment to 12 years to the co-accused, this Court is of the view that the ends of justice would met in case the punishment of sentence imposed on the appellant/second accused for the offence under Section 8(c) r/w 22(c) r/w 29 of NDPS Act and under Section 8(c) r/w 22(c) of NDPS Act is reduced from 20 years Rigorous Imprisonment to 12 years Rigorous



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Imprisonment each. The fine imposed by the trial Court for the said offences is confirmed. The conviction and sentence imposed on the appellant/second accused in respect of the other offences stand confirmed.

29. In the result, this Criminal Appeal is partly allowed and the conviction recorded by the Special Court for E.C. and NDPS Act Cases, Pudukkottai in C.C.No.44 of 2013 for the offence under Section 8(c) r/w 22(c) r/w 29 of NDPS Act and under Section 8(c) r/w 22(c) of NDPS Act stand confirmed and the sentence of imprisonment awarded at 20 years Rigorous Imprisonment for each offence is reduced to 12 years Rigorous Imprisonment for each offence. The fine imposed by the trial Court for the said offences stand confirmed. The conviction and sentence imposed on the appellant/second accused in respect of the other offences stand confirmed. The modified sentence imposed on the appellant/second accused is directed to be run concurrently and the period of sentence already undergone by the appellant/second accused shall be given set off under Section 428 Cr.P.C.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.
- 2.The Additional District and Sessions Judge,
Special Court for E.C. and NDPS Act Cases,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl. A.(MD)No.559 of 2022

Dated : 02.06.2023