



Crl.A.(MD)No.292 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.292 of 2016

Ilamaran

... Appellant

Vs.

State rep by
The Inspector of Police,
Chinnamanur Police Station,
Theni District.
(Crime No.151/2011)

... Respondent

PRAYER : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure r/w Section 36B of NDPS Act, to set aside the judgment dated 06.05.2016 passed by the learned II Additional Special Court for EC & NDPS Act cases, Madurai in C.C.No.86 of 2011 by allowing this appeal.

For Appellant : Mr.Mathesh,
Legal Aid Counsel

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the judgment dated 06.05.2016 passed by the learned II Additional Special Court for EC & NDPS Act cases, Madurai in C.C.No.86 of 2011.

2.The case of the prosecution is that on 12.03.2011 when the appellant was standing near Chinnamanoor 18th canal in a suspicious manner and the respondent police enquired him and after serving search memo, the respondent made search and the appellant was found in illegal possession of 14.300 kg of ganja. Thereafter, samples were taken and FIR was registered in Cr.No.151 of 2011 and the appellant was arrested and remanded to judicial custody.

3.After completion of investigation, the respondent police filed final report and the same has been taken cognizance by the trial Court in C.C.No.86 of 2011. On the side of the prosecution, they had examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.6. The prosecution also



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produced material objects 1 and 2. On the side of the accused, 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 punishable under Section 8(c) r/w 20(b) (2)(b) of NDPS Act and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.20,000/- in default to undergo one year simple imprisonment. Aggrieved over the same, the appellant preferred the present appeal.

5. The learned counsel appearing for the appellant would submit that even according to the case of the prosecution, on 12.03.2011, the appellant was found in illegal possession of ganja and the same was seized under seizure mahazar on the same day. However, it was sent to the trial Court only on 29.04.2011 and there was 48 days delay and the respondent police failed to explain the huge delay. Therefore, there was possibilities to put up a false case as against the appellant. That apart, the alleged contraband seized in the white bag and thereafter, it was separated. However, the respondent police failed to produce the said



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white bag as material object. In the search memo, no independent witness was signed as required under Section 50 of NDPS Act. Therefore, the prosecution failed to prove its case beyond any doubt and thereby, he prayed for acquittal.

6.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the appellant was produced before the Court along with contraband on 12.03.2011 and he was remanded to judicial custody. The contraband again came to the police station under sealed cover. Therefore, there was delay and it could not cause any prejudice to the respondent. It is not the case of the appellant that the contraband cover was broken. Therefore, non-production of white bag would not cause prejudice to the respondent, since the appellant was in possession of contraband and he is sole accused. Therefore, the prosecution categorically proved its case and the trial Court rightly convicted and sentenced the appellant and it does not warrant any interference by this Court.



7.Heard both sides and perused the materials available in the record.

8.In order to prove the charges, the prosecution had examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.6. The prosecution also produced material objects 1 and 2. On 12.03.2011, when P.W.3 was in duty along with P.W.2 and Head Constable, as per secret information, they suspected the appellant when he was standing near Chinnamanoor 18th canal. After serving search notice, which was marked as Ex.P.5, the respondent police made search on the appellant. He possessed white bag and it contained six pockets of ganja weighing 14.300 kgs of ganja. The contraband was seized in the presence of P.W.1. Thereafter, he was proceeded to Station and registered FIR, which was marked as Ex.P.6. 56 pockets weighing 50 grams of contraband were taken for sample for sending forensic and the forensic report was marked as Ex.P.3. On completion of investigation, the respondent police filed final report.

9.The first ground raised by the appellant that there was 48 days delay in sending contraband to the trial Court. On perusal of records



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revealed that the appellant was produced before the learned Magistrate along with contraband for remand. The learned Magistrate verified the contraband and remanded the appellant to judicial custody. The contraband was again returned to the Police Station for safe custody, since the learned Magistrate cannot possess the contraband. Hence, the contraband was produced on 29.04.2011. though there was 48 days delay, it would not caused any prejudice to the respondent police. That apart, it is not the case of the appellant that the seal put up by the respondent is not intact and there is possibilities for foisting false case. While remanding the accused, the contraband was sealed and the same was produced before the trial Court on 29.04.2011. Therefore, the first ground is negatived and answered in favour of the respondent.

10.The second ground raised by the appellant is that no independent witness signed in the search memo. It is seen that it was served on the appellant, for which the appellant was enquired to make search by the same police officer. Accordingly, the appellant was found in possession of contraband in the white bag. Therefore, no search was made in the appellant's body. Therefore, there is no question of violation



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of provision under Section 50 of NDPS Act. The appellant is sole accused and he was found in possession of contraband weighing 14.300 kgs. Therefore, the prosecution categorically proved its case beyond any doubt.

11.In the result, this criminal appeal is dismissed and the conviction and sentence imposed by the trial Court is hereby confirmed.

27.04.2023

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

- 1.The II Additional Special Court for EC & NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Chinnamanur Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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