



Crl.A.(MD)No.295 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 25.07.2023

Delivered on: 11.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.A.(MD)No.295 of 2016

Selvi

... Appellant

Vs.

State rep.by
The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
In Crime No.433 of 2010

... Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records in C.C.No.81 of 2011 relating to the judgment dated 01.08.2016 passed by the 2nd Additional Special Court for NDPS Act Cases, Madurai and to set aside the judgment of the conviction on the appellant/accused.

For Appellant : Mr.S.Muniyandi

For Respondent : Mrs.M.Aasha
Government Advocate(Crl.side)



Crl.A.(MD)No.295 of 2016

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JUDGMENT

This criminal appeal has been filed to set aside the judgment and the conviction on the appellant/accused in C.C.No.81 of 2011 dated 01.08.2016 passed by the 2nd Additional Special Court for NDPS Act Cases, Madurai, wherein, the appellant was arrayed as an accused for the offences under Section 8(c) r/w Section 20(b)(ii) (B) of NDPS Act. The trial Court has convicted the accused and passed sentence to undergo 1 $\frac{1}{4}$ years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment. Aggrieved over the said conviction and sentence, the appellant filed the present appeal.

2.According to the case of the prosecution, on 03.09.2010 at about 18.30 hours, when the Sub Inspector of Police, Palani Taluk Police Station along with Head Constable were on patrol duty at Neikarapatti Kuruvappa School gate, the accused was standing there, at that time, due to suspicion, they searched and the accused was in possession of 2 kgs of ganja and the same was seized through mahazar in the presence of Head Constable/P.W.2. Thereafter, they arrested the accused and took her along with properties to the police station and registered FIR in Cr.No.433 of



Crl.A.(MD)No.295 of 2016

2010 for the offence under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act.

3. Thereafter, P.W.4, Inspector of Police taken the case for investigation and examined the witnesses and sent the contraband for chemical analysis and after obtaining report and after examining the witnesses, he filed final report as against the accused for the offences under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act. Thereafter, the trial Court furnished copies as mandated under Section 207 Cr.P.C., and thereafter, framed charges under Sections 8(c) r/w Section 20(b)(ii)(B) of NDPS Act and charges were read over and explained to the accused and she denied the charges. In order to prove the case of the prosecution, they have examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.5 and material objects were also marked as M.Os.1 and 2. On the side of the accused no one was examined and no document was marked.

4. After completion of prosecution evidence, the trial Court has examined the accused under Section 313 Cr.P.C., and the accused denied the evidences. Thereafter, on perusal of oral and documentary evidences adduced on either side, the trial Court found the accused guilty for the offence under Section 8(c) r/w



Crl.A.(MD)No.295 of 2016

Section 20(b)(ii)(B) of NDPS Act and convicted and sentenced him to undergo 1 ¼ years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment.

5. Aggrieved by the above said conviction and judgment, the present appeal has been filed on the following grounds:-

i) the judgment of the lower Court is against the law, weight of evidence and probabilities of the case.

ii) the trial Court failed to consider that Section 50 of NDPS Act has not been followed and no search was conducted by the female officer and thereby, failed to follow the mandatory procedure under Section 50(4) of NDPS Act.

iii) the trial Court failed to consider the delay of three months in producing the contraband to the lower Court

iv) the trial Court failed to consider that the mandatory procedures under Section 57 of NDPS Act has not been complied with

v) the trial Court failed to consider that the contraband was covered with post date news paper dated 27.05.2012

vi) the trial Court failed to consider that the prosecution evidences are contra to each other and thereby case of the prosecution is highly doubtful.



Crl.A.(MD)No.295 of 2016

6.The learned counsel appearing for the appellant would contend that the trial Court has convicted the appellant for the offence under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act and passed sentence to undergo 1 ¼ years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment. In fact, the appellant has not committed any offence and the prosecution evidences are highly doubtful and the trial Court failed to consider that the mandatory procedures under Section 50 of NDPS Act has not been followed. The prosecution evidence shows that secret information received and the same has not been recorded and not informed to the immediate superior officer. That apart, the appellant is a female and no female officer conducted search on the appellant and arrest and the seizure of the property have not been informed to the immediate superior officer, within 48 hours and thereby, mandatory procedures under Section 57 of NDPS Act have not been complied with. As per prosecution, the property was seized on 03.09.2010, but the same was covered with news paper dated 27.05.2012. However, the trial Court failed to consider all these facts and convicted the appellant. Therefore, the judgment of the trial Court is liable to be set aside.



Crl.A.(MD)No.295 of 2016

7.The learned Government Advocate(Crl.side) appearing for the respondent police would submit that the prosecution witnesses have categorically deposed about the search conducted by them and recovery of contraband from the appellant and also the above said recovery and receipt of information was intimated to the immediate superior officer. After arrest and recovery of articles, the same was also intimated to the immediate superior officer, to that effect, a report also sent. All the grounds raised before this Court were already raised before the trial Court and the trial Court also considered all the grounds and thereafter only, based on the available evidences, rightly convicted the accused and thereby, the present appeal is liable to be dismissed.

8.Heard both sides and perused the materials available in the records.

9.According to the case of the prosecution, on 03.09.2010 at about 18.30 hours, when P.W.3 along with other officials were on patrol duty at Neikarapatti Kuruvappa School gate, the appellant was standing there in a suspicious manner. When they made enquiry, they came to know that the appellant was in illegal possession of two kgs of ganja. Thereafter, 50 grams samples was



Crl.A.(MD)No.295 of 2016

taken in the presence of P.W.2 and thereafter, came to the police station along with the accused and case properties and then, registered FIR and thereafter, case has been investigated by the Inspector of Police and he filed final report. In order to prove the case of the prosecution, they have examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.5 and also marked material objects 1 & 2. The trial Court has considered all the evidences adduced on either side and convicted the accused for the offence under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act.

10.The main ground raised by the learned counsel appearing for the appellant is that the mandatory procedures under Sections 50 and 57 have not been complied with. According to the appellant, the secret information was not informed to the immediate superior officer. In this context, P.W.4, in his evidence categorically stated that on 05.09.2010, when he was working as Circle Inspector, Palani Taluk Police Station, he taken over the case for investigation in Cr.No.433 of 2010 for the offence under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act. Further, the evidence of P.W.4 reveals that on 05.09.2010 he received the entire case papers. The accused was arrested on 03.09.2010 and the case papers were sent to the Inspector of Police within 48 hours and



thereby, there is no deviation in following the mandatory procedures under Section 57 of NDPS Act. Further, the learned Government Advocate(Crl.side) appearing for the respondent police relied upon the judgment of the Hon'ble Supreme Court of India in a case of Sajan Abraham Vs. State of Kerala reported in (2001) 6 SCC 692, wherein Hon'ble Supreme Court held as follows:-

8.Next submission is, the prosecution has violated Section 50 of the Act which is mandatory as held by the Constitution Bench of this Court in State of Punjab vs. Baldev Singh (1999) 6 SCC 172. The submission is, the appellant was not informed in writing of his right to be searched in the presence of a Magistrate or a Gazetted Officer.

9.We find PW1, PW3 and PW5 have deposed that PW5 has informed the respondent orally about it but the appellant opted out of this right. It is only thereafter a search was made.

10.In the present case we find the High Court recorded a finding that PW5 informed the appellant about his right as provided under Section 50 of the Act which is established not only by the oral evidence of PWs. 1, 3 and 5, but also by the recitals made in Ext.P1 the seizure mahazar prepared by PW5 and the F.I. Statement given by the respondent (the appellant before us). The submission, however, is communicating orally to the appellant is not a compliance under Section 50. We cannot agree. The



aforesaid Constitution Bench upholds oral communication also to be valid under Section 50 of the Act. Hence, this submission has no merit.

11.Thus in our considered opinion, we do not find, on the facts of this case, as also recorded by the High Court that there has been any violation of Section 50 of the Act.

12.The last submission for the appellant is, there is non- compliance of Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court that PW5 has sent copies of FIR and other documents to his superior officer which is not in dispute. Ex.P9 shows that the copies of the FIR along with other records regarding the arrest of appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said it has prejudiced the accused. This section is not mandatory



in nature. When substantial compliance has been made, as in the present case it would not vitiate the prosecution case. In the present case, we find PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act.

13.In State of Punjab vs. Balbir Singh (1994) 3 SCC 299, this Court held:

"The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory.."

11.On careful reading of the above said judgment reveals that though the specific report under Section 57 of NDPS Act was not sent to the immediate superior officer, sending the case papers to the higher officials is sufficient to comply the mandatory procedures under Section 57 of NDPS Act and the same would not vitiate the case of the prosecution.

12.In the case on hand, available evidences show that the entire case papers was sent to the immediate superior by the Sub Inspector of Police on 05.09.2010. The arrest of the accused and seizure of the properties was also informed on 03.09.2010.



Therefore, the contention of the appellant that mandatory procedures have not been complied with is not acceptable one. The prosecution witnesses have categorically deposed about the information received, seizure of case properties, arrest of the accused and sending contraband to the chemical analysis to the laboratory. The lab authority/P.W.1 also deposed before the trial Court that he received contraband from the Court and he examined the material and gave report in Ex.P.3 stating that the contraband contained cannabinoid. P.W.4 categorically deposed about the investigation done by him. Thereby, the prosecution proved its case as against the appellant beyond any reasonable doubt.

13.As far as arrest made by the male officer is concerned, there is no search made by the officers on the body of the accused and only they searched the bag hold by the accused and thereby there is no violation. P.W.3 in his evidence, he stated that he orally informed about the search and the appellant also consented for the same and there is no consent letter in the form of search letter. The oral consent itself is sufficient and thereby there is no violation of mandatory procedures. As far as sealing of samples is concerned, P.W.1 himself deposed before the trial Court that he received contraband under the seal of Court with requisition letter of the



Crl.A.(MD)No.295 of 2016

Inspector of Police. Therefore, there is no ground to allow this appeal.

14.The trial Court also in its judgment correctly analyzed the evidences adduced on the prosecution side and correctly found guilty and convicted the accused for the offence punishable under Section 8(c) r/w Section 20(b)(ii)(B) of NDPS Act. Therefore, there is no infirmity or illegality in the judgment passed by the trial Court and thereby, there is no warrant to interfere with the judgment passed by the trial Court.

15.In the result, this criminal appeal is dismissed by confirming the judgment passed by the trial Court. The bail bond executed by the accused is hereby cancelled and the trial Court is directed to take steps to secure the accused to serve remaining period of sentence.

11.09.2023

Index :yes/No
Internet:yes/No
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Crl.A.(MD)No.295 of 2016

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To

1.2nd Additional Special Court for NDPS Act Cases,
Madurai.

2.The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)No.295 of 2016

P.DHANABAL, J

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Pre-Delivery Order

made in
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