



Crl.A(MD)No.12 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Jeyapaul

... Petitioner/Appellant/ Accused No.1

Vs.

State Represented by the
Inspector of Police,
N.I.B.C.I.D., Madurai,
Madurai.

(Cr.No.25/2005)

... Respondent/Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the sentence and conviction imposed by the learned IInd Additional Special Court for NDPS Act Cases, Madurai in C.C.No.15 of 2006 dated 09.01.2017.

For Appellant : Mr.R.Kaunanidhi

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



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JUDGMENT

The appellant, who is the first accused in C.C.No.15 of 2006 on the file of the II Additional Special Court for NDPS Act Cases, Madurai, filed this criminal appeal challenging the conviction and sentence imposed against him by the II Additional Special Court for NDPS Act Cases, Madurai. The learned trial Judge has passed the impugned order, dated 09.01.2017 and found the appellant guilty, convicted and sentenced him as detailed below:

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>
First Accused	Section 8(c) r/w 20(b) (ii)(B) of Narcotic Drug Psychotropic Substances Act, 1985.	Rigorous Imprisonment for three years and to pay a fine of Rs.15,000/-, in default to undergo simple Imprisonment for six months.

2. The brief facts of the case:

On 01.03.2005, at 07.00 a.m, P.W.1 received the secret information regarding illegal transportation of the Ganja by the appellant and another accused namely Seenivasan. After obtaining permission as per Section 42 of Narcotic Drug Psychotropic Substances Act, 1985, (hereinafter, for the sake of brevity, referred to as “NDPS Act”)



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on information given by the informer, P.Ws.1 and 2 along with their team went to the occurrence place. On the same day, at 08.00 a.m. the appellant and another accused were identified by the informer. Immediately, P.Ws.1 and 2 intercepted the same and this appellant fled away from the occurrence place by dropping gunny bag, which contained 5 kgs of Ganja. Another accused namely Seenivasan was apprehended by the P.Ws.1 and 2. After complying Section 50 of NDPS Act, they made a search and found that he was in possession of 1 kgs of Ganja. Thereafter, P.Ws.1 and 2 arrested the second accused after taking samples weighting 50 gms and the same was separately packed. The remaining contraband was also packed. Thereafter, the same were produced before the trial Court along with the accused and the case was registered in Crime No.25 of 2005, for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act. Subsequently, P.W.2 submitted the report before the P.W.3. P.W.3, on receipt of the said report under Section 57 of NDPS Act, conducted the investigation and filed the final report before the Special Court, after obtaining the scientific expert's report. The same was taken on the file in C.C.No.15 of 2006, by the II Additional Special Court for NDPS Act Cases, Madurai.



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3.The learned trial Judge after appearance of the accused served the copies under Section 207 Cr.P.C. Then, he framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

4.To prove the case, the prosecution examined P.W.1 to P.W.4 and exhibited 9 documents as Ex.P.1 to Ex.P.9 and produced 3 material objects as M.O.1 to M.O.3. During the recording of the evidence, the second accused namely Seenivasan died and hence, the case as against him was split up in C.C.No.336 of 2016. Thereafter, the first accused was questioned under Section 313 Cr.P.C proceedings after disclosing the incriminating evidence against him and he denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on his side.

5.The learned trial Judge, on considering the evidence of witnesses and documents, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant preferred this appeal.



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6.The learned counsel appearing for the appellant submitted that the accused was falsely implicated in this case only on the basis of the confession statement of the second accused/deceased namely seenivasan. During the pendency of the trial, he died. Hence, the said confession statement is not admissible against the appellant. The evidence of the P.Ws.1 and 2 disclosed that the appellant carried 5 kgs of Ganja and deceased Seenivasan carried 1 kg of Ganja which is not believable one. In Ex.P.9 namely the report under Section 57 of the NDPS Act, it is stated that they were intercepted and seized the contraband. In the above circumstances, the case of the prosecution that the appellant fled away from the occurrence place is not believable one. In the said circumstances, the prosecution falsely implicated the petitioner since he is involved in number of cases. In the said circumstances, he seeks for acquittal on the ground that only based on the confession of the co-accused/deceased, appellant was falsely implicated in this case. He further submitted that there is no compliance of Section 52(a) of NDPS Act.



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7.The learned Additional Public Prosecutor submitted that on perusal of the impugned judgment and relevant records and also getting instructions, from the officer present today, submitted that in this case remaining contraband was produced along with samples. The remaining contraband was also marked through the trial court as physical evidence and the same was marked as M.O.3. When the entire contraband was produced before the trial Court, there is no necessity to comply Section 52(a) of NDPS Act. Further, there was no argument for non compliance of Section 52(a) of NDPS Act, during the course of trial.

7.1.He further submitted that the contention of the Section 52(a) and Ex.P.9 are not relevant. The evidence of P.Ws.1 and 2 and the second part of the report under Section 57 of NDPS Act, disclose that the appellant escaped from the scene of occurrence.

7.2.He further submitted that in this case, P.W.1 and P.W.2, specifically identified the appellant, who carried the 5kgs of Ganja, who escaped from the scene of occurrence. In the said circumstances, as per Section 8 of the Evidence Act, the conduct of appellant is material for considering the involvement of appellant. Hence, he seeks confirmation of the judgment passed by the learned trial judge.



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8.This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellant and reply made by the learned Additional Public Prosecutor and also considered the precedents relied upon by them.

9.The P.W.1 clearly deposed before the trial Court that he received information from the informer relating to the illegal transportation of the Ganja by the appellant and the deceased/second accused. The same was recovered and the same was produced before the Superior namely P.W.3. P.W.3 also affirmed that he received the information from the P.W.2 relating to the registration of the information, as per Section 42 of NDPS Act. P.W.1 further deposed that on 01.03.2005, at about 08.00 a.m., he and P.W.2 and team went to the occurrence place namely Near Meenakshi Theatre, Madurai Meenakshi Pallam, Madurai, and intercepted the appellant and the deceased. At that time, the appellant was carrying a bag containing 5 kgs of Ganja and the deceased was carrying a bag containing 1 kg of Ganja. The said appellant escaped from the scene of occurrence, after dropping the Ganja on the spot itself.



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The deceased/second accused was nabbed and he affirmed the transportation of Ganja. From the above sequence of the evidence, the P.W.1 and P.W.2 clearly deposed that the first accused escaped from the scene of occurrence. During the course of questioning under Section 313 Cr.P.C., no explanation was furnished by the appellant relating to any of the above evidence.

9.1. Even though P.W.1 and P.W.2 were cross examined by the appellant, there was no truthful answer in favour of him. During the course of examination, they specifically deposed that the appellant, after seeing the police party escaped from the scene of occurrence. In this aspect, the evidence of P.W.1 and P.W.2 are relevant who deposed that the appellant escaped by dropping the contraband is material one. As per Section 8 (f) of the Evidence Act, the conduct of the appellant is material to presume that the appellant was carrying the contraband. In the said circumstances, the prosecution clearly proved that the appellant was present at the scene of occurrence and escaped from the scene of occurrence, after dropping the contraband. In this case, the prosecution produced the physical evidence of the remaining contraband/M.O.3. Apart from that, the contraband along with



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Athatchi/Ex.P6 was produced before the Special Court on the same day. In the said circumstances, there is no tampering of the record.

10.In the above circumstances, this Court is of the considered opinion that Section 52(a) of NDPS Act, is complied with. The learned counsel appearing for the appellant submitted that the recovery was not proved and the evidence of the P.W.1 and P.W.2 can not be accepted. The said fact is clearly deposed by P.W.1 and P.W.2. Further, their evidence is co-gent and trustworthy. This Court finds no circumstance to disbelieve their evidence and hence, this Court finds no reason to interfere in the finding of the learned trial Judge convicting the accused under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

11. However, considering the fact that the appellant is aged about 68 years and ailing from kidney problem, this Court is inclined to reduce the sentence alone for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.



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12.In view of the above, though the conviction passed by the trial Court for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is confirmed, the sentence of 3 years Rigorous Imprisonment for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act is reduced to the period, which was already undergone by the appellant.

13.With the above modification, the Criminal Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. .

07.12.2023

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

1. The II Additional Special Judge for NDPS Act Cases,
Madurai.
2. The Inspector of Police,
N.I.B.C.I.D., Madurai,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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