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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.142 of 2017

Murugesan

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
(Crime No.237 of 2009)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.29 of 2009 dated 21.04.2017 on the file of the learned II Additional Special Court, EC and NDPS Act Cases, Madurai, and set aside the same.

For appellant : Mr.M.Jegadeesh Pandian

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

JUDGMENT

The accused in C.C.No.29 of 2009 on the file of the II Additional Special Court, EC and NDPS Act Cases, Madurai, has filed this Criminal Appeal before this Court challenging the conviction and sentence



imposed against him in the impugned judgment dated 21.04.2017. The conviction and sentence is as follows:

<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
8(c) r/w 20(b)(ii)(B) of the NDPS Act	5 years R.I and to pay a fine of Rs.20,000/- in default to undergo 6 months S.I

2. According to the prosecution, on 08.04.2007 at about 08.00 hours, P.W.2 and his team were on patrol duty, they found that the accused who was standing along with a plastic bag. On seeing him, P.W.2 surrounded the appellant and recovered the contraband of 10 Kgs of Ganja in a white colour plastic Gunny Bag and took the sample following the procedure stated in the NDPS Act. Then, they arrested the accused and taken him to the Station and registered the case and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by the Investigating Officer/P.W.4 and he filed the final report after obtaining the Chemical Analysis Report and examining the witnesses. The learned trial Judge has taken the same on file in C.C.No.29 of 2009.



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3. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellant, framed charges under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985, and the same was read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood for trial.

4. The prosecution, in order to prove its case, had examined 4 witnesses as P.W.1 to P.W.4 and exhibited 5 documents as Ex.P.1 to Ex.P.5 and marked two material objects as M.O.1 & M.O.2.

5. When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against him, he denied the evidence as false and further stated that a false case was foisted against him. The accused neither produced any documents nor examined any witness on his side.



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6.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.29 of 2009 was guilty and passed the conviction and sentence against the appellant as stated above.

7.The learned counsel for the appellant made the following submissions:-

7.1.There was a enormous delay i.e., 82 days in producing the contraband before the Court below and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.

7.2.Further, he submitted that there was no proper explanation for the discrepancies in the weight of the sample in the seized contraband.

7.3. The non-examination of the independent witnesses is an additional circumstance, which creates doubt over the recovery of the contraband as alleged by the prosecution.

7.4. There was no compliance of Section 57 of the NDPS Act. Hence, he seeks to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.



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8.The learned Additional Public Prosecutor made the following submissions:-

8.1.Delay in producing the contraband before the Special Court is not material lapse, to acquit the appellant, when the entire contraband was produced before the learned Judicial Magistrate at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate and thereafter, the same was produced before the Special Court without any tampering of the seal.

8.2.The said contraband was marked as material object before the trial Court without objection and hence, the contention of the learned counsel for the appellant is not legally sustainable.

8.3.The Hon'ble Constitution Bench of the Supreme Court in *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120 reiterated the principle that the non-examination of the independent witnesses is not a circumstances to disbelieve the evidence regarding recovery, when the other evidence are cogent and trust worthy. In this case, the learned trial Judge has considered the entire evidence to



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hold that the recovery from the appellant was proved in accordance with law.

8.4. In this case, the recovery was made from the bag of the appellant and hence, the procedure under Section 50 of the NDPS Act is not applicable. The contraband reached the chemical analyst and test was conducted after a period of time from the date of recovery and hence, variation of weight of 03.00 grams is possible and the seal was intact and hence, the submission of the learned counsel for the appellant is not acceptable.

8.5. In all aspects, the prosecution clearly proved the case through evidence and contemporaneous documents. Therefore, he seeks confirmation of the conviction and sentence imposed on the appellant.

9. This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.



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10. The question arises for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellant and the learned trial Judge's conviction and sentence imposed against the appellant can be sustained or not?*

11. On 08.04.2007 at 08.00 am, when P.W.2 and his team were on patrol duty, the appellant was found to be in possession of contraband. Thereafter, by following the procedure, he recovered the contraband from a plastic composed sack carried by the appellant. The said evidence of P.W.2 corroborated with the evidence of P.W.1. Both were subjected to cross examination and nothing was elicited to disbelieve their version. Further, in the evidence of P.W.1 and P.W.2, there are no material contradictions or discrepancies between their version relating to the recovery of the contraband. Their evidence are cogent and trust worthy. No material was elicited to disbelieve their version or any case of false implication. Therefore, the recovery was proved in accordance with law.



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12. P.W.2, had taken the samples from the plastic composed sack, which was carried by the appellant and properly sealed and the remaining contraband also was properly sealed. Then, they brought the accused, remaining contraband and the samples to the police station and registered the case. Thereafter, he prepared the report under Section 57 of the NDPS Act and submitted to P.W.3. He also deposed about the fact that the accused along with contraband under Form-91 was produced before the Court at the time of remand itself. There was no delay in producing the entire contraband along with the samples taken under M.O.1 & M.O.2. The Chemical Analyst speaks about the presence of *cannabis* in the samples produced before her and the report was also marked as Ex.P.5. Therefore, in all aspects, the prosecution clearly proved the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. This Court finds no merit in the contention of the learned counsel for the appellant to disbelieve their version. Hence, the conviction and sentence imposed by the learned trial Judge is hereby confirmed.



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13. However, considering the age of the appellant and also considering the fact that the appellant has no previous case, this Court is inclined to reduce the sentence from 5 year Rigorous Imprisonment to the sentence period **already undergone** for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

14. 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 hereby confirmed, sentence of 5 year 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. Fine amount with default sentence is hereby confirmed.

15. With the above modification, the Criminal Appeals are partly allowed.

07.12.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
pjl/dss



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K.K.RAMAKRISHNAN.J.

pjl/ dss

To

- 1.The II Additional Special Court, EC and NDPS Act Cases,
Madurai
2. The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.

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