



Crl.A(MD)No.410 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.410 of 2017

Shanmuga Vadivu

... Appellant/Sole Accused

Vs.

The Deputy Superintendent of Police,
NIBCID,
Thoothukudi District.
in Crime No.47/2009

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.65 of 2010 relating to the Judgment dated 28.09.2017 passed by the 1st Additional Special Court for NDPS Act Cases, Madurai and to set aside the Judgment of the conviction of the Appellant/Accused.

For Appellant : Mr.M.S.Jeyakarthik

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



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JUDGMENT

The appellant, who is the sole accused in C.C.No.65 of 2010 on the file of the I Additional Special Court for NDPS Act Cases, Madurai, filed this criminal appeal challenging the conviction and sentence imposed against her by the I Additional Special Court for NDPS Act Cases, Madurai. The learned trial Judge has passed the impugned order, dated 28.09.2017 and found the appellant guilty, convicted and sentenced her as detailed below:

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>
Sole Accused	Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drug Psychotropic Substances Act, 1985.	Rigorous Imprisonment for one year and to pay a fine of Rs.3,000/-, in default to undergo simple Imprisonment for three months.

2. The brief facts of the case:

On 02.09.2019, at 09.00 a.m., P.W.2/Special Sub Inspector of Police received secret information regarding illegal transportation of Ganja by the appellant. Thereafter, P.W.2 informed the same to P.W.4. After getting information, P.W.1 and P.W.2 and their team went to the



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occurrence place and the informer identified the appellant. Thereafter, they intercepted the appellant. After complying Section 50 of Narcotic Drug Psychotropic Substances Act, 1985, (hereinafter, for the sake of brevity, referred to as “NDPS Act”), they made search and found that she was carrying 5 kgs of Ganja. Thereafter, P.Ws.1 and 2 arrested the accused after taking samples and the same were separately packed. The remaining contraband was also packed. Thereafter, the same were produced before the trial Court along with the accused and registered the case in Crime No.47 of 2009, for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act. Subsequently, P.W.4 submitted the report before P.W.5. P.W.5, on receipt of the said report under Section 57 of NDPS Act, conducted the investigation and filed the final report before the Special Court. The same was taken on the file in C.C.No.65 of 2010, by the I Additional Special Court for NDPS Act Cases, Madurai.

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 plead not guilty and stood for trial.



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4.To prove the case, the prosecution examined P.W.1 to P.W.5 and exhibited 10 documents as Ex.P.1 to Ex.P.10 and produced 7 material objects as M.O.1 to M.O.7. Thereafter, the accused was questioned under Section 313 Cr.P.C proceedings disclosing the incriminating evidence against her and she 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 her side.

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

6.The learned counsel appearing for the appellant submitted that the consent letter under Section 50 of NDPS Act was not obtained. Hence, the entire proceedings initiated by the respondent police is illegal. He further submitted that there was a delay of 7 days in producing the contraband from the learned Judicial Magistrate to the learned Special Court. The same was not properly explained by the respondent Police.



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The learned trial judge failed to consider about the non compliance of Section 57 of NDPS Act that within 48 hours, the report has not reached the superior. Even though, the recovery was made in the public place, no independent witness was examined and hence, there was suspicion regarding the recovery of the contraband. The counsel for the appellant further submitted that there is some discrepancy regarding the weight of the contraband. Hence, he seeks acquittal from the conviction passed by the learned trial Judge.

7. The learned Additional Public Prosecutor submitted that on perusal of the impugned judgment and relevant records and also got instructions, from the officer present today and submitted that P.W.2, after effecting recovery brought the accused and submitted the report under Section 57 of NDPS Act within 48 hours to P.W.5. P.W.5 clearly stated that they received the report and the said report reached the Court on the date of the remand itself. Hence, Section 57 of NDPS Act, has been complied with. Even though the occurrence took place in the public place, the non examination of the independent witnesses will not vitiate the proceedings of recovery. No explanation given during the



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313 Cr.P.C., questioning. Further, the entire contraband along with the samples were produced at the time of remand itself.

7.1.The learned Additional Public Prosecutor submitted that the discrepancy in the weight of the contraband is not material one. The expert report under Ex.P.9, clearly states that the seal was intact and also the entire contraband were produced before the learned trial judge along with the accused. He further submitted that the delay in producing the contraband is not material. The seized contraband, and samples were produced on the date of the recovery itself at the time of remand before the learned Judicial Magistrate. In the said circumstances, the learned Court below correctly convicted the appellant for the alleged offences.

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.



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9. It is seen from the records that P.W.2 received the information and recorded the said information and the same was duly intimated to P.W.4. The said document was marked under Ex.P.4 and the same also reached the Court on the same day. Hence, the mandatory Section 42 of NDPS Act, has been complied with. P.W.2 submitted a detailed report as required under Section 57 of NDPS Act, and submitted the same to P.W.5. The evidence of P.W.5 collaborated with the said version of P.W.2 and the document under Ex.P.6 reached the Court on the same date of the occurrence. Hence, the mandatory Section 57 of NDPS Act, has been complied with. The learned counsel for the appellant submitted that there is some discrepancy regarding the weight of the contraband. This Court perused the records and also Ex.P.9/chemical analysis report. It is specifically stated in the chemical analysis report, that seal was intact. Further, the learned Judicial Magistrate also endorsed the quantum of the contraband at the time of remand itself. In the above circumstances, the said submission of the learned counsel appearing for the appellant is not sustainable. In view of the evidence of P.Ws.1 and 2, the non examination of the independent witnesses is not material. P.Ws.1 and 2 have given cogent evidence corroborating each other. Their evidence



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relating to the recovery of the contraband is also trustworthy. This Court finds no circumstances to disbelieve their evidence and hence, this Court does not find any reason to interfere with the finding of the learned trial Judge convicting the accused under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

10. However, considering the fact that the appellant is a lady and she is aged about 72 years and the learned Additional Public Prosecutor on instructions from officer present today, submitted that no case was registered against the appellant after the occurrence, 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.

11. 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, sentence of 1 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.



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

08.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg

To

1. The 1st Additional Special Judge for NDPS Act Cases,
Madurai.
2. The Deputy Superintendent of Police,
NIBCID, Thoothukudi District.
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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