



Crl.A.(MD).Nos.95 and 211 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.95 and 211 of 2017

Muthukaruppan

... Appellant/Accused No.1
in Crl.A.(MD).No.211 of 2017

Kalidoss

... Appellant/Accused No.2
in Crl.A.(MD).No.95 of 2017

Vs.

The Inspector of Police,
Palani Town Police Station,
Dindigul District.
(In Crime Nos 1668 and 1669 of 2002)

... Respondent (In both the cases)

COMMON PRAYER : Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to call for the records of the learned II Additional District and Sessions NDPS Court, Madurai, in C.C.No.73 of 2004 and set aside the judgment and conviction dated 15.11.2016 and acquit the appellants.

For Appellant : Mr.K.S.Duraipandian

in Crl.A.(MD).No.95 of 2017

Mr.V.Vishnu

in Crl.A.(MD).No.211 of 2017



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For Respondent : Mr.T.Senthilkumar

Additional Public Prosecutor

(in both CrI.As.)

COMMON JUDGMENT

These Criminal Appeals have been filed to set aside the judgment rendered by the II Additional District and Sessions NDPS Court, Madurai, in C.C.No.73 of 2004 dated 15.11.2016 and consequently direct to acquit the appellants.

2.Since the appellants in these appeals are arrayed as accused No. 1 and 2 in the Crime Nos.1668 and 1669 of 2002, these appeals are taken up together for hearing and disposed of by way of this common judgment.

3.On 21.12.2002 at 06.30 p.m, while the P.Ws.2 and 3 were on patrolling duty, they suspected the appellants and after compliance of Section 50 of Narcotic Drug Psychotropic Substances Act, 1985,



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(hereinafter, for the sake of brevity, referred to as “NDPS Act”), made a search and seized 5 kgs of Ganja from the each of the appellants. Thereafter, the samples were taken from the seized contraband and prepared Athatchi in Ex.Ps.7 and 8 and produced the accused before the investigating Officer/P.W.4 and registered the case in Crime Nos.1668 and 1669 of 2002. P.W.4 investigated the case by obtaining chemical analysis report and examining the witnesses, filed the final report before the trial Court. After filing the final report, the same was taken on file in C.C.No.73 of 2004 by the learned II Additional District and Sessions NDPS Court, Madurai.

4.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.

5.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 4 material objects as M.O.1 to M.O.4. Thereafter, all the accused were questioned under



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Section 313 Cr.P.C proceedings by putting the incriminating evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. On the side of the appellants no witness was examined and no documents were marked.

6.After considering the material adduced by the prosecution and also hearing the argument of the appellants and other accused, the trial Court convicted the appellants guilty for the offence under Sections 8(C) r/w 20(b)(ii)(c) of NDPS Act and sentenced them to undergo 3 years Rigorous Imprisonment each and to pay a fine of Rs.15,000/- each (totally Rs.30,000/-), in default to undergo six months Simple Imprisonment each. Aggrieved by the same, the present appeals have been filed.

7.The learned counsel appearing for the appellants submitted that the mandatory provision of Section 42 of NDPS Act, has not been complied with by the respondent Police. There was a delay of 36 days in sending the samples to the Chemical Lab. There was a contradiction between the P.W.3 and P.W.4 regarding the seal on the samples. The learned trial Judge without



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considering the above circumstances, convicted the appellants. It is the duty of prosecution to prove the case beyond reasonable doubt. But, in view of the above material contradiction and the lapse on the part of the prosecution/investigating agency, the case of the prosecution was not proved in accordance with law. Hence, he seeks for acquittal in this case.

8. The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, Section 42 of NDPS Act, is not applicable. Section 43 of NDPS Act, is applicable for the reason that P.W.1 and P.W.2 were on patrol duty. At that time, they suspected the appellants and seized the contraband. Hence, Section 42 of NDPS Act, is not applicable. He further submitted that the contradiction between the P.Ws.3 and 4 is not material. In the report, it is clearly stated that seal was intact. He further submitted that the delay in producing the sample to the chemical lab is not material one. The seized contraband and the samples were produced along with the accused on the day itself. There was inordinate delay in cross examining the witnesses i.e., the occurrence took place in the year 2002 and the examined the witnesses in the year 2016.



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9. This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellants and reply made by the learned Additional Public Prosecutor.

10. On 21.12.2002 at 06.30 p.m, while P.W.1 and P.W.2 were on patrol duty, they suspected the appellants. Thereafter, they made a search after complying Section 50 of the NDPS Act. At that time, they recovered the contraband in the gunny bags from the appellants carrying on the heads. They found that the recovered contraband is Ganja and thereafter, they took the samples from the each bag. The remaining contraband were sealed separately. Thereafter, the First Information Reports was registered in Crime Nos.1668 and 1669 of 2002 and the appellants along with contraband were produced before the learned Judicial Magistrate on that day itself. Further, the Athatchi was properly prepared and the same was also produced before the Court on the same day along with the remand report. Hence, this Court has no reason to disbelieve the evidence of P.W.1 and P.W.2 relating to the recovery of the contraband since all the documents were produced along



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with the accused at the time of remand. Hence, there is no question of any fabrication of the documents relating to the occurrence. There was no explanation relating to the above recovery, during the course of the questioning under Section 313 Cr.P.C. In the said circumstances, the prosecution clearly proved the recovery of the contraband from the appellants. In the said circumstances, the prosecution clearly proved the case beyond reasonable doubt, on the basis of the evidence of P.W.1 and 2 and Ex.P.7 and Ex.P.8. Apart from that, the remaining contraband were produced before the Court and also the expert gave an opinion regarding the recovered contraband. In the report, it is stated that the seal was intact and there was no tampering of the seal. This Court is satisfied that the prosecution proved the case beyond reasonable doubt as held by the learned trial Judge.

11. So far as sentence of imprisonment is concerned, the petitioner had already undergone more than 18 months. It is seen from the records that they were in prison for two months prior to the trial and the remaining period after conviction.



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12. The learned Additional Public Prosecutor, on instructions from the officer present today, submitted that the appellants are not involved in any other offence after conviction. Hence, this Court is inclined to reduce the sentence to the period already undergone by them.

13. In the result, these Criminal Appeals are partly allowed. So far as sentence is concerned, the sentence imprisonment of the appellants, as ordered by the Courts below, is reduced to the period already undergone by them.

06.12.2023

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

- 1.The learned II Additional District
and Sessions NDPS Court,
Madurai.
- 2.The Inspector of Police,
Palani Town Police Station,
Dindigul 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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