



Crl.A.(MD).No.846 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Gopinath

... Petitioner

Vs.

The State rep by
The Inspector of Police,
Thanjavur Town West Police Station,
Thanjavur District.
(Crime No.110 of 2020)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records pertaining to the judgment rendered by the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur in C.C.No.29 of 2021 vide order dated 18.11.2022 and set aside the same and consequently acquit the appellant.

For Petitioner : Mr.M.Karunanithi

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



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JUDGMENT

The learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur convicted the appellant for the offence punishable under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985 and imposed a sentence of four years rigorous imprisonment and imposed a fine of Rs.10,000/- in default to undergo simple imprisonment for a period of one year, by an impugned judgment in Spl.C.C.No.29 of 2021, dated 18.11.2022. Challenging the same, the appellant filed this appeal.

2. P.W.5 is the Inspector of police, Thanjavur west police station, on 28.02.2020, at about 08.10 pm., received a secret information regarding the transportation of Ganja, by the appellant in the Mela Alangam, near Kottai Valaivu. After recording the same in the general diary and also informed to the higher officials and obtained permission, he proceeded towards the place of occurrence with his team along with necessary instruments at about 8:30, p.m. The said informer identified the appellant. After the identification, P.W.5 and his team intercepted him and when he is attempting to escape from the scene of occurrence, they caught hold him



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and informed about the right of conducting a search in the presence of the learned Magistrate or the Gazetted Officer, for which, he gave consent letter under Ex.A1 to conduct search by P.W.5 himself. Thereafter, he handed over the white colour polythene paper to P.W.5. PW5 on opening the same, found that there is Ganja, weighing 1.200 kgs. After ascertaining the same, he arrested the appellant under Ex.B3. On 09.45 p.m, the Mahazar was prepared under Ex.P2.

2.1. Then, P.W.5 brought the appellant with recovered contraband, samples to the police station and he registered FIR in Crime No.110 of 2020 for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985. The FIR was marked as Ex.B6. Thereafter, he went to the spot and prepared the sketch and observation Mahazar in the presence of the witnesses Radhakrishnan(P.W.3) and Parthiban(P.W.4). Ex.P7 is the observation Mahazar and Ex.P8 is the rough sketch. Subsequently, he sent the sealed samples along with and remaining contraband under Form 91 to the competent Court along with the appellant/accused at the time of the remand. He sent a detailed Special report under section 57 of the NDPS Act, which



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was marked as Ex.P11 to the higher officers. Thereafter, he was transferred to some other place and hence, P.W.6 conducted investigation and obtained chemical analysis report under Ex.P10 with the positive result of the presence of cannabis and filed a final report before the Special Court under Essential Commodities Act, Thanjavur District, for the offence under Section under section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985.

3. The learned trial Judge taken the case on file in Spl.C.C.No.29 of 2021 and after furnishing the copies under section 207 of Cr.P.C., framed the necessary charges and questioned the accused. The appellant/accused was not pleaded guilty and hence he stood for trial.

4. During trial, the prosecution has examined P.W.1 to P.W.6 and exhibited Ex.P.1 to Ex.P.11, and M.O.1 to M.O.3 were produced. Thereafter, the learned trial Judge put the question under Section 313 of Cr.P.C., relating to the incriminating materials available as against the appellant and the same was denied as false. Thereafter the accused neither examined any evidence nor produced any documents on his side



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5. Then, the learned trial Judge, after considering the evidence, arguments made by both the parties, convicted the appellant for the offence punishable under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985, imposed the sentence of four years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one year. Aggrieved over the same, the appellant preferred the present appeal before this Court.

6.1 The learned counsel for the appellant submitted that the learned trial Judge, without considering the material discrepancies between P.W.1 and P.W.5 relating to the recovery of the contraband and also the arrest of the appellant, erroneously convicted the appellant under section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985. The trial Judge failed to consider that P.W.5, did not depose about the compliance of section 42 of the NDPS Act. Therefore, there is a violation of Section 42 of the NDPS Act.



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6.2. Number of contradiction and infirmities in the evidence of P.W.5 and P.W.1 and the observation mahazar witness and the rough sketch witness were turned hostile. Therefore, the prosecution failed to prove the case as against the appellant beyond all reasonable doubt. Further, there is no compliance of Section 57 of the NDPS Act and the Special Report as mandated under Section 57 of the NDPS Act was not submitted to the superior in time. In this case, P.W.5, who is the author of the report Ex.P.11 never deposed about the preparation of the report under Section 57 of the Act. Hence, the learned counsel for the appellant submitted that there is total violation of Sections 42 and 57 of the Act. Even though the said violation is not directory and cumulative of the violation of both Section, other discrepancies and contradiction between the witnesses, clearly revealed that the prosecution failed to prove the case beyond all reasonable doubts. The learned counsel for the appellant further submitted that the appellant is inside the jail for more than 10 months. There was no previous antecedents against the accused and hence, he prays to allow this Appeal.



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7. The Learned Additional Public Prosecutor submitted that provision under section 42 of the Act is not complied with is not correct. P.W.5 clearly recorded the same and informed to the jurisdictional Deputy Superintendent of Police and the same was marked as Ex.P9. Hence there is strict compliance of Section 42 of the Act. Even though Section 57 of the Act is not marked through P.W.5, but the report under section 57 under Ex.P. 11 is prepared by P.W.5. The said omission is not affected the conviction passed by the learned trial Judge. The argument of the appellant that there was a contradiction between P.W.1 and P.W.5 regarding the search and recovery of the contraband is concerned, there was no material contradiction between the evidence and both evidence clearly spoke about the arrest of the accused, recovery of the contraband and also the compliance of section 52 of the NDPS Act and hence, there is no need to interfere with the judgment of the trial Judge.

8. This Court considered the rival submissions made on either side and perused the materials available on record and also the impugned



judgement passed by the learned trial judge.

8.1 The only point to be decided in the appeal is whether the conviction and sentence imposed by the Court below against the appellant under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985 is sustainable?

9. As stated above, P.W.5 received the information, which was reduced to writing under Ex.P9 and the same was sent to the Deputy Superintendent of Police, Thanjavur. It was also sent to the trial Court along with the arrest memo of the accused on 28.02.2020 itself. Hence there was no doubt over the compliance of Section 42 of the Act. The Special report under Section 57 is also prepared by P.W.5 and the same was inadvertently omitted to mark through P.W.5. Hence, it is marked through the Investigating Officer/P.W.6. There was no question put to any of the witnesses regarding the above said document. The same was properly prepared and submitted to the Court below. The Deputy Superintendent of Police has also acknowledged the same. In the said circumstances, it is to be noted that the provisions of Section 57 of the Act is complied with. This



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Court does not find any merit in the contention of the learned counsel for the appellant that there is a contradiction between P.W.5 and P.W.1. The evidence of P.W.1 and P.W.5 is corroborated with the material particulars i.e., arrest of the accused and the recovery of the contraband. All the contraband are properly packed and sample is also properly sealed. Thereafter, Form 91 along with the contraband also immediately sent to the concerned Court. There was no cross-examination doubting the recovery and the procedure followed.

10. The entire cross examination of P.W.1 is relating to the non-examination of the independent witnesses. It is a well settled law that the non examination of independent witnesses is not a fatal to the prosecution, when the evidence of P.W.1 and P.W.5 is cogent and trustworthy. The chemical examiner also gave the finding that recovered the sample for contraband consist of "cannabis". Both samples and that remaining contraband also produced before the Court as physical evidence. In all circumstances, the prosecution has clearly proved that the case against the appellant for possession of Ganja weighing 1.200gms, and hence, the



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learned trial Judge correctly passed the conviction under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985 Act.

11. In the said circumstances, this court does not find any infirmity in the judgement and conviction rendered by the court below. Therefore, this Court confirms the conviction passed by the court below under section 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985. The learned counsel for the appellant seeks reduction of sentence. Considering the quantity of contraband and also considering that there is no previous antecedents and there is every chance of reformation of the appellant, this Court is inclined to reduce the sentence from four years to ten months.

12. The conviction passed by the learned Additional District Judge/ Presiding Officer, Special Court under Essential Commodities Act, Thanjavur District, against the appellant in C.C.No.29 of 2021, dated 18.11.2022, for the offence punishable under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985, is **confirmed and sentence imposed upon him to undergo four years rigorous imprisonment alone is reduced to ten**



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months rigorous imprisonment. The fine of Rs.10,000/- in default to undergo simple imprisonment for one year imposed by the trial Court, stands confirmed.

13. Accordingly, this Criminal Appeal is allowed in part.

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NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbm



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To

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- 1.The Inspector of Police,
Thanjavur Town West Police Station,
Thanjavur District.
- 2.The Additional District Judge/Presiding Officer,
Special Court under Essential Commodities Act,
Thanjavur.
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent of Prison,
Central Jail,
Trichy.



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K.K.RAMAKRISHNAN, J.

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