



Crl.A.No.146 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.146 of 2023

Parithosh Sarkar ... Appellant/Sole Accused

vs.

State represented by
Inspector of Police,
NIB-CID Vellore Police Station,
Vellore District.
(Crime No.11/2018) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the C.C.No.27 of 2018 on the file of the learned Sessions Judge, Special Court for EC/NDPS Act Cases, Salem, and set aside the Judgment dated 30.03.2021 and acquit the appellant.

For Appellant : Mr.S.Silambu Selvan,

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon him vide judgment dated 30.03.2021 in C.C.No.27 of 2018, on the file of the learned Sessions Judge, Special Court for EC/NDPS Act Cases, Salem.

2 (i) The case of the prosecution is that on 23.02.2018 at about 1.30p.m., at Katpadi Railway Station bus stop, the appellant was found in illegal possession of ganja weighing about 5kg valued about Rs.50,000/- and thereby committed the offences under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act.

(ii) It is the further case of the prosecution that on information given by a secret informer over the phone that a north Indian was in possession of Ganja at the police Station, PW1 the Head Constable of NIB CID Vellore, recorded the information and after obtaining permission from his superior officer viz., Inspector of Police (PW5) proceeded to the scene of the



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occurrence along with PW2 at about 1.00 p.m.; that about 1.30 p.m., that they saw the appellant standing at the Katpadi Railway Station bus stop along with the polythene bag, who was identified by the informer; that when PW1 enquired the above person, he had responded in Hindi and hence, PW1 sought the help of one Narasimhan (PW4), who was working at a College and who knew Hindi, to translate the statement of the appellant; that thereafter, PW1 introduced himself to the appellant and on the search conducted, the appellant was found in possession of the Ganja in a polythene bag; that PW1 had informed the appellant about his right to be searched in the presence of a Magistrate or a Gazetted Officer; that the appellant expressed that PW1 could search him and that the consent of the appellant [Ex.P2] was reduced into writing; that PW1 thereafter, weighed the Ganja and had collected two packets, each containing 25gms of ganja for sample and assigned the same as S1 and S2.

(iii) PW1 thereafter arrested the appellant and FIR was registered in Cr.No.11 of 2018 at 4.00 p.m., for the offence under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act. The said FIR was marked as Ex.P5.



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(iv) PW5, the Inspector of Police and the investigating officer examined the other witnesses and filed the final report as stated earlier, before the learned Special Judge, Special court for EC/NDPS Act Cases, Salem. The trial Court framed charges under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act. against the accused and when questioned, the accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 5 witnesses as P.W.1 to P.W.5, marked 10 documents as Exs.P1 to P10 and marked 3 material objects as M.O.1 to M.O.3. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of defence, no oral or documentary evidence was let in.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt



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and held the appellant/accused guilty of offences under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/-, in default to undergo rigorous imprisonment for one year. Hence, the appeal.

3. Heard, Mr.S.Silambu Selvan, learned senior counsel appearing for the appellant/Accused, and Dr.C.E.Pratap, learned Government Advocate (Crl. Side), appearing for the respondent/State.

4. Mr.S.Silambu Selvan, the learned counsel appearing for the appellant would submit that the prosecution had not proved its case beyond doubt; that the entire case is based on the evidence of the police witnesses and no independent witnesses were examined; that the respondent had not complied with the mandatory provisions and pointed out the contradictions in the deposition of the prosecution witnesses and prayed for acquittal.

5. Learned Government Advocate (Crl. Side) *per contra* submitted that submitted that the evidence of the witnesses, is cogent and convincing



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and there is nothing to suggest that their evidence is unbelievable; that the trial Court therefore found the appellant guilty of the offence and there is no reason to interfere with the impugned judgment and prayed for dismissal of the appeal.

6. I have carefully considered the rival submissions and perused all the relevant materials available on record.

7. As stated earlier, the prosecution had examined five witnesses and marked Ex.P1 to P10. PW1 and PW2 are members of the raiding party; PW3 also accompanied PW1 and PW2 to the scene of the occurrence; PW4 is the employee of the College, who translated the statement of the appellant; and PW5 is the investigating officer.

8. Though there are no independent witnesses, the question is whether the prosecution had established its case on the basis of the evidence of PW1 to PW3. PW1's deposition is that he had received a secret information and after reducing the information in writing, he had informed his superior



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officer (PW5), the Inspector of Police and accompanied by PW2 and PW3, he went with NDPS kit to the scene of the occurrence and on the identification by the informer, the appellant was questioned and he was found in possession of 5 kg of ganja in polythene cover. The mandatory provisions under Section 50 of the NDPS Act, was complied with and the consent given by the appellant was marked as Ex.P2. The search was conducted by PW1 in the presence of PW2 and PW3. Two samples, each weighing 25gms were drawn by PW1 and kept in two polythene covers and marked as S1 and S2 and thereafter, the appellant was arrested.

9. The said fact is corroborated by the evidence of PW2 and PW3. Nothing has been elicited in the cross examination to disbelieve the evidence of the aforesaid witnesses except for making suggestions, which do not discredit the evidence of three witnesses.

10. The seizure mahazar was signed by PW2 and PW3 as witnesses. The statement made by the appellant was translated by PW4, who also would corroborate the evidence of PW1 to PW3. He would depose that the



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contents of the mahazar was explained to the appellant and the appellant thereafter affixed his thumb impression in recovery mahazar. Nothing has been elicited in the cross-examination of PW4 to discredit his testimony. PW5 is the investigating officer. In his cross-examination, apart from the suggestions made to the investigating officer, the defence questioned him as to why independent witnesses were not examined. The investigating officer had explained that independent witnesses were not available. The evidence of PW5 is believable.

11. Thus, this Court finds that the appellant was unable to discredit the testimony of any of the witnesses or establish that there is violation of the mandatory provisions. In such circumstances, the finding of guilt rendered by the Court below cannot be faulted. However, considering the facts and circumstances of the case, the nature of the allegations and also the fact that there are no previous cases against the appellant, this Court is of the view that sentence imposed upon the appellant by the trial Court can be reduced.



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12. The learned Government Advocate (Crl. Side) on instructions would submit that the appellant is in custody since 23.02.2018 and was not on bail during trial and this Court had suspended the sentence on 24.02.2023. The appellant therefore was in custody for a period of 5 years.

13. In the result, the finding of guilt and conviction by the trial court in C.C.No.27 of 2018 dated 30.03.2021, on the file of the learned Special Judge, Special Court for EC/NDPS Act Cases, Salem, is confirmed, however the sentence imposed by the trial Court is modified to the effect that the appellant shall undergo the sentence of five years rigorous imprisonment and pay a fine of Rs.50,000/- in default to undergo one year rigorous imprisonment. The period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C. and if the appellant has not undergone the period of sentence imposed by this Court, or default sentence for nonpayment of fine, he may be secured to undergo the remaining period of sentence, forthwith.

14. With the above modification, the Criminal Appeal stands partly



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allowed.

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Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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SUNDER MOHAN,J.

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Copy to:

- 1.The Sessions Judge,
Special Court of EC/NDPS Act Cases, (FAC), Salem
- 2.The Inspector of Police,
NIB-CID Vellore Police Station,
Vellore District.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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