



CRL.A.No.205 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

CRL.A.No.205 of 2018

1.Ayub

2.Haridas

... Appellants

vs.

State rep.by
The Inspector of Police,
Ukkadam Police Station,
Coimbatore District.
(Crime No.97 of 2015)

... Respondent

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment dated 08.03.2018 made in C.C.No.24 of 2015 on the file of the Additional District / Presiding Officer Special Court for E.C.Act., Cases, Coimbatore.

For Appellants : Mr.S.N.Arun Kumar

For Respondent : Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

JUDGMENT

This appeal has been preferred against the conviction and sentence passed in the judgment dated 08.03.2018 in C.C.No.24 of 2015 by the



CRL.A.No.205 of 2018

learned Special Judge, Additional District Court for E.C.Act., Cases,
Coimbatore. By the Accused No.1 and 2.

2. After hearing both sides and upon consideration of the evidence, the trial Court by a judgment dated 08.03.2018, convicted the 1st and 2nd accused for the offence under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and sentenced them to undergo three years Rigorous Imprisonment each and to pay fine of Rs.10,000/- each, in default to undergo further period of 6 months Rigorous Imprisonment. Accused No.3 was acquitted of the charge under Section 248 of Cr.P.C. Accused No.1 and 2 have filed this appeal challenging the above said conviction and sentence.

3. The case of the prosecution in brief is as follows:

- One Chandralekha, Sub-Inspector of Police (PW1) upon an information on 22.02.2015 at about 12 noon, the accused Ayub(A1) and Haridass(A2) procured Ganja from Sahul Hameed(A3) for the purpose of sale.
- The Accused No.1 and 2 were in possession of Ganja near the northern side of Ukkadam bye-pass bridge.
- She recorded the information (Ex.P1) and this was duly intimated to the Inspector of Police (PW6).



CRL.A.No.205 of 2018

●On due permission, she proceeded to the above said place along with Mr.Arumugam, Head Constable (PW3) and Mr.Nataraj, Grade-I Police Constable by 12.15 noon.

●The 1st and 2nd accused were identified by the informant. PW1-Chandralekha intercepted the accused and informed them that they intended to search them on information. PW1-Chandralekha gave them an option as per Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985, for being searched either before Judicial Magistrate or Gazetted Officer.

●But, the 1st and 2nd accused chose to be searched by Sub-Inspector of Police Chandralekha-PW1.

●As per consent letter -Ex.P2 on search by PW1 in the presence of Arumugam, Head Constable (PW3), Suresh Kumar (PW2) and witness Sekar on the 1st accused. The 1st accused was found in possession of brittle dry leaves which was kept in a pack.

●On examination by the police, it was found to contain 2.200 kg of Ganja. Two samples of 50 gms each in two polythene covers were drawn by PW1-Chandralekha and kept in a sealed cover and the Ganja of 2.100 kg was kept in a sealed polythene cover.

●The sample covers and the remaining Ganja pack were labelled as 'A', 'B'



CRL.A.No.205 of 2018

and 'C'. The 1st accused signed on the same in the presence of Suresh Kumar (PW2) and one Sekar who have also attested. PW1 signed on the said pack. The two sample packs are M.O.I series. The remaining Ganja pack containing 2.100 kg is M.O.II.

- On search, the two accused were found in possession of two samsung cell phones purchased from the amount got by selling Ganja and cash of Rs.21,360/-(Denominations of Rs.500/- X 38 ; Rs.100/- X3; Rs.50 X1; and Rs.10 X1), was seized through a Seizure Mahazar-Ex.P3 in the presence of Suresh Kumar (PW2) and witness Sekar.

- The two accused were arrested by 1.30 p.m., and were taken to the police station. Case (F.I.R. - Ex.P4) was registered in Cr.No.97 of 2015 under Section 8(C) r/w.20(b)(ii)(B) of NDPS Act. PW1 submitted a special report (Ex.P6) to the Inspector of Police.

4. The case was taken up for investigation by Mr.Kanaga Sabapathi-Inspector of Police. He visited the scene of occurrence in the presence of Ramu (PW4) and another witness Srinivasan at about 4.30 p.m., on the same day and prepared Observation Mahazar -Ex.P7 and Rough Sketch (Ex.P9). He enquired the witnesses and recorded their statements. The accused were sent for the purpose of remand along with the contraband



CRL.A.No.205 of 2018

seized with requisition letter Ex.P11 to the Special Court. Formal arrest was made in respect of the third accused as he was in judicial custody in some other case. The Scientific Officer Mr.Rajmohan tested the sample and gave a positive report-Ex.P8 to the effect that the sample is ganja.

5. The chemical analysis report -Ex.P8 was obtained from him and Kanaga Sabapathi(PW6) - Inspector of Police recorded his statement. Upon completion of his investigation laid charge sheet under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act before the Special Court.

6. The final report was taken on file by the Special Court and upon the appearance of the accused, copies of the relied upon documents along with final report were furnished to the accused under Section 207 Cr.P.C.,

7. On hearing both sides, charge under Section 8(C) r/w.20(b)(ii)(B) of NDPS Act was framed and explained to the accused. When the Accused were questioned, it was denied by them and pleaded not guilty.

8. To substantiate the charge, on the prosecution side, six witnesses were examined and 11 documents and 4 M.Os., were marked. When the accused was questioned under Section 313 Cr.P.C., about the



CRL.A.No.205 of 2018

incriminating portions of evidence, they denied the same. On the side of the accused, no witness was examined.

9. Heard Mr.W.Camyles Gandhi, learned counsel appearing for the accused / appellants 1 and 2 and Mr.S.Udaya Kumar, learned Government Advocate (Crl.Side) for the respondent / State.

10. It is the argument of Mr.W.Camyles Gandhi, appearing for the appellants 1 and 2 / accused 1 and 2 that the contraband which was seized on 22.02.2015 was produced through Ex.P10 – Form-91, on 12.03.2015. The delay caused in producing the contraband before the Special Court was not properly explained by the prosecution. The option under Section 50 of NDPS Act, was not complied with properly, by not getting consent letter independently. To buttress his arguments, the following judgments were referred to:

(i) *Union of India (UOI) v. Mohanlal and Others*
[Manu/SC/0073/2016].

(ii) *Simarnjit Singh v. State of Punjab* [2023 LiveLaw (SC) 570].

11. Per contra, Mr.S.Udayakumar, learned Government Advocate



CRL.A.No.205 of 2018

(Crl.Side) appearing for the State, contended that as the charge was duly proved by the prosecution side, the trial Court has convicted the accused and to strengthen his argument, the following judgment was referred to:

(i) Valsala v. State of Kerala [1993 Supp(3) SCC 665.

12. The Hon'ble Supreme Court in ***Union of India (UOI) v. Mohanlal and Others [Manu/SC/0073/2016]*** has given a direction to the concerned Head of the Departments while investigating the case referring to the circular dated 23.02.2011 issued by Ministry of Finance Department of Revenue, Government of India.

13. It is the evidence of PW1 that on 22.02.2015 at about 12 noon, the source informant informed him through phone that two persons aged about 26 years were selling ganja to the north side of Ukkadam bye-pass flyover junction and such information was recorded by her and sent to the Inspector of Police (PW6), she obtained due permission from the Inspector of Police and proceeded to the said place along with Tr.Arumugam, Head Constable, Tr.Nataraj- Ist Grade Police Constable and with other police men. It is his further evidence that he intercepted the accused and he got introduced himself and appraised the accused of the right to be searched



CRL.A.No.205 of 2018

either before the Judicial Magistrate or before the Gazetted Officer as per

Section 50 of NDPS Act and obtained permission in the same letter Ex.P2.

On search, the 1st accused was in possession of a packed material wrapped with old news paper when he opened the said pack he found that it is brittled leaves and found to be ganja weighing 2.200 Kg.

14. It has come on record through his evidence that he drew two samples of 50 gms each and sealed the samples. The remaining pack weighed 2.100 kg, they are marked as 'A', 'B', 'C' respectively. An amount of Rs.21,360/- got through the sale of ganja along with the two samsung cell phones were seized from the 2nd accused. All the said objects were seized from the accused through seizure mahazar in the presence of Suresh kumar and Sekar. During cross-examination, a suggestion was posed that as consent letter Ex.P1 was written in different inks and for the purpose of this case it was prepared at the later point of time, was denied by him.

15. It is the evidence of independent witness PW2 Suresh Kumar that on 22.02.2015 at about 12 noon, when he was crossing Ukkadam by-pass, Ukkadam police came in a jeep and brought the accused No.1 to 3.



CRL.A.No.205 of 2018

WEB COPY

16. It is his further evidence that the Sub-Inspector of Police brought a bag, whereas, PW1 has stated that 1st accused was in possession of a pack wrapped with old news paper. All the other details namely drawing of sample, compliance with Section 50 and preparation of Mahazar, seizure of contraband and cash have been in detail spoken about the independent witness. PW3 is Arumugam, Head Constable. He has corroborated the evidence of PW1-Chandralekha. PW4 – Ramu is the Observation Mahazar witness. Through him, Observation Mahazar was marked as Ex.P7.

17. It has come on record through the evidence of Rajmohan – PW5 Chemical analyst that he was in receipt of a pack wrapped with news paper weighing 50 gms and on chemical analysis, it was found to be ganja and chemical analysis report is Ex.P8. He was not cross examined. It is the evidence of Investigation Officer-PW6 Kanagasabapathi that on 22.02.2015, the accused were sent for judicial custody along with the properties. Form-91 is Ex.P10. But, it appears that only on 12.03.2015, through Form-91, the contraband was received and the sample contraband was sent to the Coimbatore Regional Forensic Science Laboratory.



CRL.A.No.205 of 2018

18. In this case, the independent witness was examined as PW2(Suresh Kumar) as mentioned supra. He has corroborated the evidence of PW1 and PW3 in material aspects. PW1-Chandralekha, Sub-Inspector of Police would state that the 1st accused was found in possession of a pack wrapped with news paper, whereas PW2 has stated that the woman-Sub-Inspector of Police brought a bag. This details was not contradicted to PW2 at all during cross-examination. Therefore, this contradiction will not cause any serious dent on the prosecution case. It is relevant to extract Section 50 of NDPS Act as under:

"50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted



CRL.A.No.205 of 2018

Officer or the Magistrate referred to in subsection (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two



CRL.A.No.205 of 2018

hours send a copy thereof to his immediate official superior."

WEB COPY

The object of Section 50 of NDPS Act is that search if it is taken in the presence of Judicial Magistrate or Gazetted Officer, the accused is safeguarded against the planting of incriminating material.

19. In this case, in compliance with Section 50, the accused were informed about their right available. The consent letter was obtained from both persons in one letter(Ex.P2). Obtaining of one letter from both the accused cannot be held to be a non-compliance of Section 50 of the NDPS Act.

20. Most importantly, chemical analyst - PW5 Mr.Rajmohan has stated that the contraband in a paper pack was received along with the request of the Court and on chemical analysis, it was found as ganja, he gave opinion that it is ganja. The chemical analysis report is Ex.P8. He was not at all cross-examined.

21. The next contention put forth by the learned counsel for the appellant is that the contraband was though seized on 22.02.2015, it was



CRL.A.No.205 of 2018

produced before the Court only on 12.03.2015. It is the evidence of PW1 that she duly sealed the two samples 'A' and 'B' and the samples which were sent to the Special Court was received and forwarded to the Forensic Science Laboratory. Not even a suggestion was posed to PW1 during her cross-examination to this effect.

22. Based on the aforesaid discussions, this Court does not find any infirmity in the judgment of the trial Court warranting interference.

23. In the result, this Criminal Appeal stands dismissed and the judgment dated 08.03.2018 passed in C.C.No.24 of 2015 by the Additional District / Presiding Officer, Special Court for E.C.Act., Cases, Coimbatore is hereby confirmed.

31.01.2024

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
ssn



WEB COPY



CRL.A.No.205 of 2018

To:

1. The Additional District / Presiding Officer,
Special Court for E.C.Act., Cases,
Coimbatore.
2. The Inspector of Police,
Ukkadam Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



CRL.A.No.205 of 2018

R.KALAIMATHI, J.,

ssn

CRL.A.No.205 of 2018

31.01.2024