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Crl.A.No.305 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.305 of 2016

Sundari

...Appellant / Accused

vs.

The Inspector of Police,
NIB CID,
Chennai.

...Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders, dated 12.04.2016 passed in C.C.No.25/2008 by the Special Judge, I Additional Special Court under NDPS Act, Chennai.

For Appellant : Mr.R.Ganesh,
Legal Aid Counsel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal is filed against the judgment and orders dated 12.04.2016, passed by the Special Judge, I Additional Special



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Court under NDPS Act, Chennai, in C.C.No.25/2008.

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2. The appellant is the accused in C.C.No.25/2008 and he is convicted and sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Sundari	Section 8(c) r/w. 20 (b) (ii) (B) of NDPS Act.	Rigorous Imprisonment for a period of one year and a fine of Rs.2000/-, in default to undergo Simple Imprisonment for three months.
The period of sentence already undergone by him is set off under Section 428 Cr.P.C.		

3. The case of the prosecution in a condensed form is as follows :

3.1. Thiru.C.Murugan, (P.W.2) the then Sub Inspector of Police received an information on 01.08.2006 with regard to transportation of Ganja near Bharathi Nagar, 6th Street, Korukkupet, Chennai. He reduced the information into writing (Ex.P3) and submitted the same to the Inspector of Police V.G.Vimalkanth (not examined). He also obtained his permission and proceeded to the scene of occurrence, along with Thiru.V.Annakamu (P.W.3), Head Constable of Police, NIBCID. The appellant was identified by the informant. P.W.2 introduced himself and his Police party to the appellant. They explained to the appellant the



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provisions of Section 50 of Narcotic Drugs and Psychotropic Substances

Act, 1985 (hereinafter referred to as 'NDPS Act') and since the appellant gave his consent to be searched by the Police officials, a search was conducted. A notice of seizure (Ex.P4) was issued to her by P.W.2. The appellant was found carrying 3 Kgs of Ganja in a yellow colour polythene bag and the contraband was seized under the cover of a Mahazar (Ex.P5). Two samples of 50 grams (M.O.2) each were taken from the contraband. Samples and the remaining contraband were packed and sealed with NIB seal in which P.W.2, the appellant and the other witnesses appended their signatures.

3.2. P.W.2 also recorded the confession statement (Ex.P3) of the accused and the accused was arrested at about 11 hours on 01.08.2006. Thereafter P.W.2 prepared a report (Ex.P7) under Section 57 of NDPS Act. An F.I.R. in Crime No.53/2006 was also registered under Sections 8(c) r/w. 20(b)(ii)(B) of the NDPS Act Act against the appellant. The accused was thereafter produced before the XXVI Metropolitan Magistrate, George Town, Chennai on the same day, i.e., 01.08.2006 along with contraband under Form 95 and was remanded to judicial



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custody.

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3.3. Thiru.John Joseph (P.W.5) the then Inspector of Police took up investigation in Crime No.53/06 and sent the samples for chemical analysis through Court.

3.4. Thiru.Sankar Kumar, (P.W.1) Junior Scientific Assistant of Tamil Nadu Forensic Science Lab, Chennai analysed the samples and opined that the sample contained 'cannabenoids' and it is 'Ganja'. His report was marked as Ex.P2.

3.5. P.W.5, the investigation officer examined the witnesses and recorded their statements individually and after completing investigation laid a final report, against the appellant, for the offences punishable under Sections 8(c) r/w. 20(b)(ii)(B) of the NDPS Act before the Special Judge under NDPS Act, Chennai.

3.6. The Special Judge, I Additional Special Court under NDPS



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Act, Chennai took cognizance of the offence under Sections 8(c) r/w.

20(b)(ii)(B) of the NDPS Act and issued summons to the accused.

Charges were framed for the offences under Sections 8(c) r/w.

20(b)(ii)(B) of the NDPS Act and since the appellant pleaded not guilty,

the case was posted for trial.

3.7. In order to bring home the guilt of the accused, the prosecution examined 5 Witnesses and marked 9 Exhibits and 3 Material Objects. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of Cr.PC, she denied of having committed any offence. However, she did not adduce any oral/documentary evidence.

3.8. The learned Special Judge, after analysing the evidence on record, vide his Judgement dated 12.04.2016, convicted and sentenced the accused as stated in paragraph No.2. Aggrieved over the same, the present Criminal Appeal has been filed by the accused.

4. Heard Mr.R.Ganesh, learned Legal Aid Counsel for the



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appellant and Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent/state.

5. Mr.R.Ganesh, learned legal aid counsel appearing for the appellant would contend that no independent witness was examined on the side of the prosecution to prove the offences against the appellant. The samples were taken out from the contraband at the spot itself in contravention of the procedures laid down under the Act and the trial Court without considering this, had convicted the accused for the offences punishable under Sections 8(c) r/w. 20 (b) (ii) (B) of NDPS Act. He therefore prayed for setting aside the conviction and sentence passed by the trial Court.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.



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7. In the instant case, the Police officials, NIB CID, Chennai, on receipt of the information went to the place of occurrence and found the appellant in possession of 3 Kgs of Ganja without any valid permit/licence. Though two samples of 50grams each were taken at the spot by the Police officials from the appellant, it is seen from the records that P.W.2, the Sub Inspector of Police had explained the provisions of Section 50 of the NDPS Act to the appellant and got her permission to conduct search in the place of occurrence. I do not find any infirmity in complying with the provisions of Section 50 of NDPS Act by the Police officials.

8. The evidence of the Sub Inspector of Police was amply corroborated by P.W.3 in all material particulars. The samples were also sent to the concerned Judicial Magistrate Court immediately on the date of occurrence as is seen from the endorsement made by the Judicial Magistrate in Form 95. In the circumstances, the contention of the counsel for the appellant that the samples should not have been taken by the Police at the spot, cannot be accepted especially the seizure of 3 kgs of Ganja was not at all questioned by the appellant. The evidence of P.W.1, Scientific officer, shows that the contraband contained



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'cannbenoids' and it is Ganja. The absence of independent witnesses cannot also be said to be fatal to the case of the prosecution, especially when P.W.2 to P.W.4 had cogently narrated the sequence of events and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their versions. Moreover the answers given by the appellant at the time of questioning under Section 313 (i) (b) Cr.P.C., are simple denial. In the circumstances, the conviction and sentence passed by the trial Court is perfectly in order and there is no reason for this Court to interfere with the same.

9. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The Judgment and Orders dated 12.04.2016 in C.C.No.25/2008 passed by the Special Judge, I Additional Special Court under NDPS Act, Chennai is confirmed.
- iii. The appellant / accused is directed to surrender before the trial Court viz., the Special Judge, I Additional Special Court under NDPS Act, Chennai, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the



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accused to serve the remaining period of sentence.

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iv. This Court places on record its appreciation to Mr.R.Ganesh, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee is directed to pay a sum of Rs.10,000/- to the said counsel towards his fee.

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vum

Index : yes/no

Speaking /Non speaking Order

Neutral Citation : Yes / No



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R.HEMALATHA, J.

vum

To

- 1.The Inspector of Police, NIB CID, Chennai.
2. The Special Judge, I Additional Special Court under NDPS Act, Chennai.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

Copy to

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai - 104.

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