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CrI.R.C.No. 1044 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No. 1044 of 2021

Jothimani

... Petitioner

Vs.

State Represented by its
Inspector of Police,
M-3, Puzhal Police Station,
Puzhal, Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C., against the judgment passed by the Principal Sessions Judge, Thiruvallur in Criminal Appeal No.19 of 2017 dated 06.02.2020 which confirmed the conviction and sentence passed on him by the Judicial Magistrate, Thiruvottiur in C.C.No.85 of 2014 dated 19.12.2016.

For Petitioner : Mr.V.T.Narendiran

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor



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ORDER

The petitioner / accused convicted in C.C.No.85 of 2014 by judgment dated 19.12.2016 for offences under Section 8(c) r/w. 20(b)(ii)A of the N.D.P.S. Act sentenced for six months rigorous imprisonment, preferred an appeal before the Principal Sessions Court in Crl.A.No.19 of 2017. The Principal Sessions Judge by its judgment dated 06.02.2020 dismissed the same, against which, the present revision has been filed. Thereafter, this revision was dismissed by order dated 20.10.2022, rendering an exparte judgment without any representation on the side of the petitioner. Hence, the petitioner had preferred an appeal before the Apex Court in Special Leave Petition (Criminal) No.4522 of 2024. The Apex Court by order dated 23.07.2024, finding that an exparte order without any legal representation for the petitioner had been rendered, had set aside the judgment dated 20.10.2022 of this Court and remanded back the case to this Court. Thus, the revision is heard today.

2. The brief facts of the case is that one Senthilkumar, Jailor, Central Prison-II, Puzhal had lodged a complaint on 12.01.2012 stating that one Jothimani / the petitioner herein who is a Police, at about 2.55 p.m. by wearing



uniform had entered the Prison and at that time, the Head Constable, Devaraj / P.W.2, who was in charge of the gate frisked the petitioner / accused and found a hidden article in the form of a small ball rolled with black colour insulation in his under garments. The said Devaraj questioned the petitioner and he was unable to give proper reason for his entry to the Prison and informed that one Murugan had given him the packet, asking him to place the same near tower block entrance and promised to pay Rs.2,000/-. The packet seized found to be of 150 gms of Ganja. Hence, a complaint with the seized packet was lodged to P.W.1, who registered the case in Crime No.85 of 2014 under Section 20(b) of N.D.P.S. Act.

3. On registration of the case, he enquired P.W.2 / Devaraj, Head Constable, P.W.3 / Shanmugasundaram, Grade - II Constable who was assigned the duty of P.W.4 / Mohankumar, Grade - I Constable and the seized contraband and P.W.5 / Scientific Officer, confirming the contraband has issued analysis report / Ex.P3. Thereafter, on conclusion of investigation, charge sheet was filed before the Trial Court. Before the Trial Court, P.W.1 to P.W.6 were examined and marked Exs.P1 to P5 and MO1 / Material object. On the side of the defendant, no witness examined and no documents marked. On



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conclusion of the trial, the Trial Court convicted the petitioner as stated above.

Hence, the petitioner preferred an appeal in Crl.A.No.19 of 2017 and the Sessions Court, dismissed the appeal by confirming the conviction and sentence of the Trial Court. Against which, the present revision is preferred.

4. The primary contention of the petitioner is that P.W.1 admits that the petitioner was brought before him and the occurrence had taken place at about 2.55 hours on 12.01.2012 but, the complaint has been lodged with an unexplained delay of about 20.45 hours. It is admitted by him that the Police Station is only half a kilometre and it will take only 5 minutes to reach. No reason given. However, the P.W.1 admits that the plastic wrapped packet was opened by him and found 150 grams of Kanja. P.W.6 evidence is that along with the complaint, accused, a packet of Kanja was handed over and thereafter, he opened it and found the contraband to be Kanja.

5. Further, in this case, Form-95 reached the Court with a delay. Added to it, the contraband was sent to P.W.5 on 08.04.2013 with a delay of more than 1 year 3 months under whose custody the contraband was kept whether it was tampered, not established. He further submitted that P.W.1 / Devaraj



states it was P.W.3 who had frisked and found the plastic packet but, the evidence of P.W.3 is that P.W.2 had searched and found the packet. P.W.4 evidence is that it was P.W.2 who had frisked and not P.W.3. Hence, there is contradiction who frisked and searched the petitioner and who recovered the plastic packet containing Kanja and there is no proper explanation for the delay in lodging the complaint and sending the contraband to the Court and from the Court to the Forensic lab. Hence, there is a clear violation of Section 50 & 52-A of the N.D.P.S. Act. This fact has not been considered by both the Trial Court as well as the lower Appellate Court.

6. The learned Government Advocate submitted that in this case, the petitioner is not a third person, he is a Police Constable and by wearing uniform entered the restricted area of Central Prison, Puzhal and the same is proved by the evidence of P.W.2, P.W.3 & P.W.4. It is a procedure, whoever enters the Prison should be frisked and the petitioner was frisked at that time a ball like substance found on question, he was unable to give proper answer and thereafter, he was frisked and searched and upon search, packet was recovered. Thereafter, the petitioner was produced to the higher official namely, P.W.1.



7. In this case, Section 50 would not apply for the reason, it is only a chance recovery. The frisking and search is a routine procedure which is done on the persons who enter the restricted area. Whether the petitioner had any reason to enter and why he insisted to go near the tower gate, the petitioner failed to give any explanation, by cross-examination or during his examination under 313 of Cr.P.C. Likewise, it is a small quantity of contraband of 150 grams of Ganja hence, taking samples and sending the samples and retaining the contraband does not arise.

8. In this case, the entire plastic pack containing Kanja sent for chemical examination and P.W.5, after examining the contraband and found it is Kanja. The P.W.5 had given the certificate. Analysis report / Ex.P3 not seriously disputed. In this case, the delay has been projected and the same is reasonable and explained. P.W.1 / the Jailor had given explanation that the delay is to get Officials clearance and P.W.6 / Investigating Officer confirms the same. It is an unusual act committed by a Police Constable who is required to guard, maintain utmost devotion to the duty but, petitioner taken up smuggling Kanja, hence, after approval and concurrence of the Superior complaint lodged which took some time caused delay. Hence, the delay in lodging the complaint explained and accepted by both Courts below.



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9. In this case, the petitioner was found and caught with contraband, P.W.2, P.W.3 & P.W.4, frisked and searched, MO1 recovered and P.W.1 along with the petitioner lodged a complaint with MO1. P.W.5 confirmed MO1 to be Kanja. The delay has been explained. The petitioner having found with Kanja is unable to give explanation. The Trial Court and lower appellate Court on the evidence of witness and material produced had rightly convicted the petitioner. This Court finds no reason to interfere with the findings of the Courts below.

10. Hence, this Court finds that the conviction of the petitioner by the Courts below do not need interference. Accordingly, this Criminal Revision Case is dismissed. No costs. The respondent Police is directed to secure the petitioner, to undergo the period of conviction.

11.09.2024

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Internet: Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No



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M.NIRMAL KUMAR, J.

KKN

To

- 1.The Principal District Judge,
Thiruvallur.
- 2.The Judicial Magistrate,
Thiruvottiyur.
- 3.The Inspector of Police,
M-3, Puzhal Police Station,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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