



Crl.A.No.1294 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1294 of 2022 and

Crl.M.P.No.19576 of 2022

Suguna,
W/o.Chokkanathan

... Appellant

Vs.

State By:
The Inspector of Police,
E2 Peelamedu Police Station,
Coimbatore.
Cr.No.622 of 2022.

... Respondent

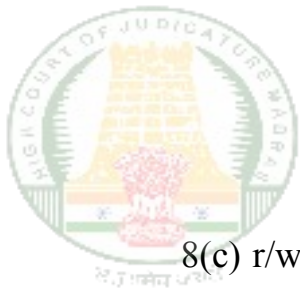
PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment, conviction passed against the appellant by the Special Court under EC Act/NDPS Act, Coimbatore in C.C.No.70 of 2018, dated 26.10.2022 and acquit her.

For Appellant : Mr.V.R.Balasubramaniam for
Mr.M.Jaikumar

For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor

JUDGMENT

The appellant was convicted by the learned Additional District Judge, Special Court under EC Act/NDPS Act, Coimbatore (Trial Court) *vide* judgment, dated 26.10.2022 in C.C.No.70 of 2018 for offence under Section



8(c) r/w 20(b)(ii)(B) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (In short 'the Act') and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.1,00,000/- in default to undergo Rigorous Imprisonment for one year. Challenging the same, the present criminal appeal is filed.

2.The case of the prosecution is that on 16.04.2018, at about 01.45 p.m., the Inspector of Police (PW4) attached to the respondent Police Station received secret information that two persons were peddling Ganja near Zonal Scientific Centre, Kodisiya Road, Coimbatore. The information recorded in Ex.P1 and the same was entered in General Diary, further intimation was sent to higher officials. PW4 along with informer, Head Constable (PW1) and Woman Police Constable (PW2) reached the spot, informer identified two persons. Thereafter, the Police enquired the appellant and her husband Chokkanathan, informed them they got credible information that the appellant and her husband were in possession of Ganja. At about 02.15 p.m., intimation under Section 50 of the Act served, search conducted. On search, Ganja of 1.300 kgs and cash of Rs.3,600/- seized in presence of PW3 and another witness. The Women Police Constable (PW2) searched the appellant, a lady, from her shopper bag (MO3), Ganja found, samples taken, wrapped and



sealed. Thereafter, the appellant and her husband Chokkanathan brought to the Police Station, FIR in Crime No.622 of 2018 (Ex.P6) registered and produced them before the Magistrate. PW4 conducted further investigation, recorded the statements of witnesses, sent the samples for chemical examination and received the chemical analysis report. The chemical analysis report (Ex.P9) confirmed the contraband was Ganja. On conclusion of investigation, charge sheet filed before the trial Court and the same was taken on file as C.C.No.70 of 2018.

3.During trial, on the side of the prosecution, four witnesses examined as PW1 to PW4 and nine documents marked as Exs.P1 to P9 and five material objects marked as MO1 to MO5. On the side of the defence, no witness examined and no document marked. A1, the husband of the appellant died on 01.05.2018, hence, the case against him got abated. On conclusion of trial, the trial Court convicted the appellant/A2 as stated above.

4.The learned counsel for the appellant submitted that in this case, the Inspector of Police (PW4) received secret information and visited the site along with three Police Constables viz., PW1, PW2 and one Loganathan. PW3, the mahazar witness admits that near the scene of occurrence, there are



shops and buildings, but no public examined as witness in this case. He further submitted that in this case, no confession recorded from the accused and statutory violations of Sections 42(2), 43, 50 and 57 of the Act committed. He further submitted that there are contradictions in the evidence of PW1, PW2, PW4 and search, seizure & arrest becomes doubtful. Ex.P2 is projected as search report in compliance to Section 50 of the Act. In this case, option for search given jointly to both the accused (A1 & A2) and not separately which is in clear violation of the statutory provision of Section 50 of the Act. Ex.P1 is projected as report in compliance to Section 42(2) of the Act, but the same not forwarded to the superior officer. After the arrest of the accused, as per Section 57, report of arrest and seizure ought to be submitted within 72 hours which is violated in this case. Further referring to Form 91 for production of seized articles from the accused, it is submitted that the remanding Magistrate on 16.04.2018 made endorsement “property not produced”. Thereafter, the property produced only on 31.05.2018 with a delay of 45 days. No explanation given under whose proper custody, the contraband kept during this period. Hence, delayed production of contraband without any explanation is fatal to the prosecution case.

5.The learned counsel further submitted that the samples not taken in



presence of Magistrate as contemplated in the case of **Mohanlal**. For violation of Sections 42, 50 & 57 of the Act, the appellant placing reliance on the decision of this Court in the case of “**Mohamed Ali and Ors. v. The State** reported in **2021(4)MLJ (Crl) 399**” wherein this Court referring to the decision of the Hon'ble Apex Court in the case of “**Karnail Singh v. State of Haryana** reported in **(2009) 8 SCC 539**” and “**State of Rajasthan v. V.Parmanand and others** reported in **(2014) 5 SCC 335**” held that 'after violating all the rules and regulations, the present case has been investigated by the Investigating Officer'. The learned counsel further submitted that the trial Court referring to the judgment of the Hon'ble Apex Court in the case of “**Dayalu Kashyap v. The State of Chhattisgarh** reported in **2022 LiveLaw (SC) 100**” and holding that substantial compliance of Section 50 is enough, is not proper on the facts of the above case. Making the above submissions and relying upon the decisions, the learned counsel for the appellant prays for setting aside the impugned judgment of the trial Court.

6.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and opposed the appeal stating that on 16.04.2018 at about 01.45 p.m., the Inspector of Police (PW4) received secret information of selling of Ganja illegally near Zonal Scientific Centre at Kodisiya Road,



Coimbatore. The informer accompanied the Inspector of Police (PW4), Head Constable (PW1), Woman Police Constable (PW2), identified the accused and left the place. PW4 enquired the appellant and her husband Chokkanathan, served notice under Section 50 of the Act and conducted search. During search, 1.300 kgs of dry Ganja found from the appellant and cash of Rs.3,600/- from her husband seized and mahazars drawn. All these proceedings conducted before the public witness (PW3) and another. After seizure of Ganja and drawing samples, the accused were taken to the Police Station by PW4. Then, PW4 registered FIR (Ex.P6), took up investigation, produced the accused for remand and sent the samples for chemical examination. The chemical analysis report (Ex.P9) confirmed the contraband is Ganja. On recording statement of witnesses, collecting documents, charge sheet filed before the trial Court. During trial, four witnesses examined as PW1 to PW4 and nine documents marked as Exs.P1 to P9. PW2 is the Woman Police Constable who searched the appellant and from the shopper bag (MO3), Ganja (MO1 & MO2) seized and wrapped in MO5. MO4 is a small air tight covers. Thus, the appellant along with her husband were peddling Ganja in small portions to college students which is menace to the society. The appellant having not raised any objection at the time of search, seizure and arrest, now cannot make a claim that Section 50 of the Act not complied with. The minor



contradictions between the evidence of PW1 to PW4 would show the witnesses are natural and trustworthy. Apart from the Police personnels, a public witness (PW3) confirmed the search, seizure, recovery and arrest of the accused. The trial Court on the evidence and materials had rightly convicted the appellant *vide* impugned judgment, dated 26.10.2022 which needs no interference of this Court.

7.Considering the submissions and on perusal of the materials, it is seen that the appellant along with her husband Chokanathan were peddling Ganja to college student near Zonal Scientific Centre at Kodisiya Road, Coimbatore. The informer gave information, received by the Inspector of Police. PW4 recorded the same in Ex.P1 and went to the spot along with PW1, PW2 and one Loganathan. Ex.P1 is projected in compliance to Section 42(2) of the Act. The Constitutional Bench of the Hon'ble Apex Court in the case of “***Karnail Singh v. State of Haryana*** reported in (2009) 8 SCC 539” clearly held that violation of Sections 42(1) & (2) are fatal to the prosecution case. In Ex.P1 apart from PW4's signature, there is nothing to show that the superior officer of PW4 received information, acknowledged and also approved the same. Ex.P2 is projected as seizure report under Section 50 of the Act. In the case of “***State of Rajasthan v. V.Parmanand and others*** reported in (2014) 5 SCC



335”, the Hon'ble Apex Court clearly held that the joint communication of the right under Section 50(1) of the Act to the accused would frustrate the very purport of Section 50 of the Act.

8.In this case, the Police personnels are PW1, PW2 and PW4 and the other witness PW3 is a sugarcane juice street vendor who is at the mercy of the Police and Corporation officials. His evidence to be considered cautiously since he is a street vendor at the mercy of Police and he is an obliging witness. PW3 in his evidence admits that signature of Chokkanathan/A1 found in Exs.P2 & P3 are in variance. In this case, admittedly, PW4 is the person who received the information, visited the scene of occurrence along with the Police personnels, secured the accused, seized the contraband, registered FIR (Ex.P6) and thereafter, continued with the investigation. In view of the same, Sections 42, 50 & 57 of the Act not complied with. Admittedly, Ex.P1 was not acknowledged or signed by any superior officer. As stated above, option for search has been jointly given to both the accused and no report of arrest and seizure as per Section 57 of the Act submitted. Hence, there are clear violation of the statutory provisions. Added to it, the contraband in this case was not produced before the remanding Magistrate on 16.04.2018, which is clearly recorded in Ex.P7. The contraband was produced before the Magistrate only



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on 31.05.2018 with a delay of 45 days. No explanation given under whose safe custody, the contraband was kept during that period. Further, the chemical analysis report (Ex.P9) marked through the Inspector of Police (PW4) is not proper. Admittedly, no Scientific Officer from the Forensic Department examined.

9.The Hon'ble Apex Court in the decisions cited above clearly held that violation of statutory compliances is lethal and fatal to the prosecution case. In the instant case, the procedure adopted by the Investigating Officer is not in procedure contemplated under the Act. The trial Court failed to consider the statutory violations and rendered judgment of conviction against the appellant.

10.In view of the above, the impugned judgment passed by the learned Additional District Judge, Special Court under EC Act/NDPS Act, Coimbatore, dated 26.10.2022 in C.C.No.70 of 2018 is set aside and this criminal appeal stands allowed. The appellant is directed to be released forthwith if she is not required in any other case/proceedings. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled. The connected criminal miscellaneous petition is closed.



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04.06.2024

WEB COPY

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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Note: Issue Order Copy on 04.06.2024.

To

- 1.The Additional District Judge,
Special Court under EC Act/NDPS Act,
Coimbatore.
- 2.The Inspector of Police,
E2 Peelamedu Police Station,
Coimbatore.
- 3.The Public Prosecutor,
Madras High Court.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN



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