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Crl.A.No.1505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1505 of 2024

Kakooza Stella

...Appellant/Accused – 2

VS.

State represented by
The Inspector of Police,
NIB-CID
Chennai.

... Respondent/Complainant

Criminal Appeal filed under Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the Judgment passed against the accused in C.C.No.167 of 2019 by the learned Principal Special Judge, EC and NDPS Court, Chennai dated 26.12.2022.

For Appellant : Ms.K.Anusuya

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



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JUDGMENT

The above appeal has been filed challenging the conviction and sentence imposed on the appellant/A2 for the offences under Sections 8(c) r/w 22(b) and 29(1) of the Narcotic Drugs Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act).

2 (a). The appellant/A2 was arrested on 17.09.2019 for possession of three grams of cocaine. After complying with the formalities and on investigation, the respondent Police filed the Final Report against the appellant/A2 before the learned Principal Sessions Judge, the Principal Special Court under the EC and NDPS Act, Chennai.

(b) The trial Court framed charges under Section 8(c) r/w 20(b)(ii)(B), 29(1), 22(b) and 28 of the NDPS Act against the appellant/accused-2, and when questioned, the appellant/accused -2 pleaded 'not guilty.'



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(c) To prove the case, the prosecution examined 6 witnesses as P.W.1 to P.W.6, marked 17 documents as Exs.P1 to P17 and marked 5 material objects as M.O.1 to M.O.5. When the appellant/accused-2 was questioned, u/s. 313 Cr.P.C., on the incriminating circumstances appearing against her, she denied the same. On the side of defence, three witnesses were examined as D.W.1 to D.W.3 and no documents were marked.

(d) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the offences against the petitioner and sentenced the petitioner to five years of rigorous imprisonment and to pay a fine of Rs.50,000/- and in default to suffer six months of rigorous imprisonment for the offence under Section 8(c) r/w 22(b) of the Act and sentenced to three years of rigorous imprisonment and to pay a fine of Rs. 25,000/- and in default to suffer six months of rigorous imprisonment for the offence under Section 29(1) of the NDPS Act. The sentences were ordered to run concurrently. Hence, the appeal.



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3. Heard, Ms. K. Anusuya, learned counsel appearing for the appellant/A2, and Dr.C.E.Pratap, learned Government Advocate (Crl. Side), appearing for the respondent/State.

4(a). Mr.K.Anusuya, the learned Counsel for the appellant/A2, submitted that though there are arguable points in the above appeal that require consideration, she would confine her submissions only with regard to the reduction of the default sentence, as the appellant/A2 had served the substantial sentence of 5 years and three months already.

(b). The learned counsel for the appellant/A2 also relied upon the Judgments of this Court in (i) ***T.Udaya Chandran @ Ramesh Vs. State rep. by the Intelligence Officer*** reported in ***CDJ 2012 MHC 1209***, (ii) ***Rajapandi and another Vs. State rep. by the Inspector of Police***, reported in ***CDJ 2021 MHC 5821*** and ***S.Edmand and another Vs. State by the Intelligence Officer*** reported in ***CDJ 2012 MHC 1209***, in support of her submission.



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5. Dr.C.E.Pratap, the learned Government Advocate (Crl.Side), appearing for the respondent, on instructions would submit that the appellant has been in custody since 18.09.2019, and she was not released on bail during the investigation or trial.

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

7. The sentence of imprisonment imposed on the appellant for the offences under Sections 8(c) r/w 22(b) and 29(1) of the NDPS Act were directed to run concurrently by the trial Court. In light of the admitted fact that the petitioner had served the sentence of five years and the appellant/A2 is now serving the default sentence for non payment of fine, this Court is of the view that the default sentence can be reduced considering the fact that the appellant/A2 has served the substantial sentence. In similar circumstances, this Court had reduced the default sentence from one year of rigorous imprisonment to one month of rigorous imprisonment in



Crl.A.No.110 of 2012 dated 14.02.2012 (cited supra). The relevant portion reads as follows:

“7. At this Juncture, it is appropriate to consider the decision of Apex Court reported in 2006 Drugs Cases (Narcotics) 707 (Balwinder Singh v. Asst. Commissioner Customs and Central Excise), in which, it is stated as follows:

“.. .. The sentence imposed on him was imprisonment for a period of 14 years. Having regard to the facts and circumstances of this case, we reduce the sentence from 14 years to 10 years each for the offences under the NDPS Act and for the offence under Section 120-B IPC. The sentences shall run concurrently. The direction to pay fine is maintained, but the default sentence shall also run concurrently.”

In the above decision, the accused was convicted for three counts. So the default sentence has been ordered to run concurrently.”

8. As per the decision of this Court made in Crl.A.No.291 of 2010 and M.P.No.1 of 2010, the Hon'ble Mr.Justice K.N.Basha reduced the default sentence from one year rigorous imprisonment to one month rigorous imprisonment and the same has been followed by the Judgment of this Court made in Crl.A.No.689 of 2008 by the Hon'ble Justice



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Mr.S.Nagamuthu. Considering the above decisions, the appellant/A2 is only a Carrier and he received the contraband and handed over to A1. In such circumstances, the above citation is squarely applicable to the facts of the present case.

9. Considering the fact that he is languishing in prison from 03.11.2002 and since the appellant/A2 is only a Carrier, I am inclined to reduce the default sentence from one year rigorous imprisonment to one month rigorous imprisonment.”

8. Further in ***Crl.A.Nos. 155 of 2015 and 2013 of 2016*** reported in ***CDJ 2021 MHC 5281***, this Court had relied upon the Judgment of the Hon'ble Supreme Court in ***Shahejadjkhan Mahebubkhan Pathan Vs. State of Gujrat*** reported in ***CDJ 2012 SC 701***, wherein the Hon'ble Supreme Court had stipulated as to how a fine could be imposed and the nature of the default sentence that could be imposed. The relevant portion reads as follows:

“39. In view of the decision of the Supreme Court reported in CDJ 2012 SC 701 [Shahejadjkhan Mahebubkhan Pathan Vs.State of Gujarath] has held as follows:-



“12. It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it was modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstances, we are of the view that it is the duty of the Court to keep in view the nature of the offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 of IPC, make it clear that an amount of fine should not be harsh nor excessive. We also reiterate that where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.

“40. Taking into consideration the period of conviction and the sentence awarded in the preceding paragraphs, the default sentence has granted by the learned Sessions Judge, is



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reduced to one month Rigorous Imprisonment in default of payment of fine.

9. Considering the above facts, this Court is of the view that the default sentence can be reduced to three months of rigorous imprisonment for both the offences and the default sentences for non payment of fine can be directed to run concurrently for both the offences under Sections 8(c) r/w 22(b) and 29(1) of the NDPS Act. If the appellant had served the substantive sentence of five years R.I., and the default sentence of three months RI imposed by this Court, she shall be released forthwith unless her presence is required in connection with any other case.

10. With the above modification, this Criminal Appeal stands partly allowed.

17.12.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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Note: Issue order copy by 19.12.2024.



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- 1.The Principal Special Judge,
EC and NDPS Court, Chennai
- 2.The Inspector of Police,
NIB-CID
Chennai.
3. The Superintendent of Prisons,
Puzhal Prison Women,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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