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Cr1.A(MD)No.76 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16/10/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Cr1.A(MD)No.76 of 2021

Gowri Balan @ Kannan : Appellant/Sole Accused

Vs.

State rep. by the
The Deputy Superintendent of Police,
NIB-CID,
Ramnad District.
(Crime No.54 of 2015) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records in CC No.112 of 2015, dated 04/11/2019 on the file of the Additional District and Sessions Court/Special Court for EC and NDPS Act cases, Pudukkottai and set aside the same.

For Appellant : Mr.A.Robinson
(Legal Aid Counsel)

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed seeking to set aside the judgment passed in CC No.112 of 2015, dated 04/11/2019 by the Additional District and Sessions Court/Special Court for EC and NDPS Act cases, Pudukkottai.



2.The case of the prosecution in brief:-

On 15/07/2015 at about 05.00 am, PW3-Rajeswari was working as Inspector of Police, NIB-CID, Ramnad. She received a secret information from the informant about the alleged occurrence. Based upon the above said information, the Inspector of Police along with a police team members went to Dhanushkodi Seashore area at about 08.00 am. The informant identified one unknown person. The police team apprehended that person. On enquiry, he revealed his name as Gowri Balan @ Kannan. On suspicion, search was made and found in possession of 500 gms of heroin. Sampling was undertaken as per the procedure. A case in Crime No.54 of 2015 was registered for the offences under section 6(c) r/w 22, 23 of the NDPS Act and section 14(a) of the Foreigners Act, 1946. After completing the investigation, final report was filed charge sheeting the accused under sections 22 and 23 of the NDPS Act and section 14(a) of Foreigners Act, 1946 and section 21(c) of the NDPS Act, 1985 and it was taken cognizance by the Special Court, Pudukottai in CC No.112 of 2015. After completing 207 Cr.P.C proceedings framed the charges for the offences punishable under sections sections 22 and 23 of the NDPS Act and section 14(a) of Foreigners Act, 1946 and section 21(c) of the NDPS Act, 1985 against the accused.



3.The following charges were framed against the
accused:-

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(i)On 15/07/2015 at about 05.00 am, on secrete information the Inspector of Police, NIB-CID, Ramnad along with a police team members went to Dhanushkodi Seashore area at about 08.00 am; On enquiry, the accused revealed his name as Gowri Balan @ Kannan. On suspicion, search was made and found in possession of 500 gms of heroin and thereby, the accused committed the offences under sections 8(c) r/w 21(c) and 22 of NDPS Act;

(ii)In pursuance of the above said occurrence, the accused tried to smuggle the contraband to Srilanka through boat and thereby, the accused committed the offence under section 8(c) r/w 23 of the NDPS Act.

(iii)By using the fake passport, the accused entered India and tried to smuggle the contraband to Srilanka and thereby, committed the offence under section 14(a) of the Foreigners Act, 1946.



4.The accused denied the charges and claimed to be tried.

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5.During trial, on the side of the prosecution, 6 witnesses were examined and 10 documents exhibited. Apart from that, 2 material objects were marked. Specimen signature of the accused was marked as Ex.X1. On the side of the accused, no oral and documentary evidence was adduced.

6.The case of the prosecution, as narrated through the witnesses as follows:-

PW1 who was working as Special Sub Inspector of Police attached to the Special Intelligence Bureau-CID in Ramnad, on 15/07/2005. At that time, the Inspector of Police namely PW3 received a secret information at 05.00 am, that contraband has been smuggled in that particular place. So, along with PW3 and other team of police officials went to Dhanushkodi Seashore area. She informed simultaneously to PW2-Village Administrative Officer to come to that place to witness the occurrence. At about 08.00 am, the Police Informer identified one person. On enquiry with that person, he disclosed his name as 'Gowri Balan @ Kannan' belongs to Srilanka. On suspension, he was



searched and found in possession of 500 grams of heroin in a brown cover. Sampling was taken as per the procedure.

Mahazar was prepared, wherein the signatures of the witnesses were obtained, arrested the accused at 09.45 am. The accused voluntarily came forward to give confession. That was recorded in the presence of the witnesses. He informed that he came to the Seashore area to smuggle the contraband to Srilanka. At about 11.30 am, she prepared a parvai Mahazar, rough sketch, etc., in the presence of the witnesses. Along with the contraband, the accused came to the office and registered a case in Crime No.54 of 2015 for the offences under sections 8(c) r/w 22, 23 of the NDPS Act and section 14(a) of the Foreigners Act, 1946 and submitted the original documents to the court and copies to the concerned authorities and sent the seized articles, heroin, passport and other documents to the court.

7. Further investigation was undertaken by PW6, who was working as Deputy Superintendent of Police at the relevant of time in the said Special Intelligence Bureau for Narcotic. To that, investigated on 18/08/2005. He went to the place of occurrence and verified the parvai mahazar and rough sketch prepared by the Inspector of Police and found to be correct. He recorded the statement of the witnesses, who were already examined by the Inspector of Police namely PW3. Since they repeated the very same



statement, he did not record the repeated statements. He recorded the statement of PW3 on 20/10/2015, submitted the seized articles for chemical analysis. After receiving the report from the Forensic Science Lab, he recorded the statement of the Scientific Assistant and recorded the statement of the Medical Officer and completed the investigation and filed a final report on 20/10/2015 under sections 8(c) r/w 22, 23 of the NDPS Act and section 14(a) of the Foreigners Act, 1946. As mentioned above, PW1 accompanied PW3 for the raid. He corroborated the evidence of PW3 to the material particulars with regard to the arrest and seizure, sampling etc. facts.

8.PW2 is the Village Administrative Officer, who visited the place of occurrence on the information given by PW3 and he has corroborated in material particulars of the above said facts with PW1 and PW3.

9.PW4 was working as Deputy Director of Narcotic Unit attached to the Tamil Nadu Forensic Lab. She examined the articles submitted for analysis and found that it is heroin. She submitted a report under Ex.P10.

10.PW5 was the Medical Officer attached to the Government Medical College Hospital, Sivagangai. He was asked to opine by the Narcotic Bureau as to the effect of



heroin. He gave his opinion. With that, the prosecution side evidence was closed.

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11.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

12.At the conclusion of the trial, the trial court found the accused guilty of the offences under section 8(c) r/w 21(C) of NDPS Act and sentenced him to undergo 10 years RI each and to pay a fine of Rs.1,00,000/- each in default to undergo 6 months SI; for the offence under section 14(a) r/w 14(B) of Foreigners Act and sentenced to undergo 2 years RI and to pay a fine of Rs.10,000/- in default to undergo 3 months SI and directed to run the sentences concurrently.

13.Against which, this criminal appeal is preferred by the appellants.

14.Heard both sides



15.The accused defended himself before the trial court. Reading of the cross examination made by the appellant shows that he has concentrated not on the main issue, but on the story of illusion, he has cross examined the witness hours together. That was fairly admitted by the learned counsel, who was appointed as Legal Aid to prosecute this criminal appeal that proper cross examination was not made by the accused.

16.A simple case of red handed arrest, recovery or seizure of heroin weighing about 500 gms by the team comprised by PW3 and PW1. No other independent witness other than PW1 and PW3 are available in this case and there was a reason for the learned counsel appearing for the appellant for his submission that evidentiary value of PW1 to PW3 must be closely and carefully scrutinized.

17.The judgment of the trial court is also very simple running to few pages, apparently due to simple nature of the prosecution case.

18.Before we concentrate the argument of the learned counsel for the appellant, the background facts may be kept in mind.



19.The appellant is a Srilankan citizen. For what purpose, he came to India is not known. Confession statement of the accused alone is available and it may not proper on the part of this court to look into the confession statement for the purpose of visit of the accused to India.

20.Suffice to say that he has not disclosed the proper reason for visiting India. Even before the Trial court, it appears that no such explanation was offered.

21.It is a finding by the trial court that the Passport itself is a fake one. Even the time mentioned in the fake Passport expired. He was staying in India for illegal purpose. So, that is the case of the prosecution.

22.Ex.P8 is the Passport. Ex.A9 is the ID Card. The name mentioned in Ex.P8 does not tally with the accused name. In the Passport, the name is mentioned as Navaratnasingam, S/o.Balasingam, whereas the name of the appellant is Gowri Balan @ Kannan.

23.It is not the case of the appellant that his name has been wrongly mentioned by the prosecution. So, it is a clear finding by the trial court to the effect that Ex.P8 is a fake Passport. By using the Passport, he entered



India. Absolutely, there is no contra evidence or explanation on the side of the appellant herein to challenge the above said finding of fact recorded by the trial court. So, that finding of fact remains conclusive and is confirmed, no interference is called for. Even in the grounds of appeal, no ground is made out. They are concentrating mainly upon the seizure of heroine.

24.Now the question, which arises for consideration is as mentioned by the appellant's counsel, whether the evidence of PW1 to PW3 can be believed to sustain the prosecution case.

25.The learned counsel appearing for the appellant would draw the attention of this court to the discrepancies occurred in the prosecution case. According to him, when the discrepancy occurred and inherent defects are available, the oral evidence of PW1 to PW3 are not sufficient enough to convict the accused.

26.He would further submit that PW3 received a secret information at about 05.00 am, on 15/07/2005. Nowhere she has stated that she recorded the information as per the procedure and sent a report to the higher authorities. Nothing has been stated by her that the above said information was submitted to the higher authorities



and PW1 only assisting PW3; Reading of the cross examination of PW3 does not indicate a specific question with regard to the non-compliance of NDPS Act probably for the reasons stated above.

27.Now the question, which arises for consideration is where from the information recorded on the secret information in the GD itself is sufficient enough to doubt the prosecution case. This point will be answered in the later portion of the judgment by taking into account the subsequent events.

28.PW1 to PW3 corroborated each other with regard to the subsequent events. *Prima facie*, it is seen that the accused was arrested red handed along with the contraband.

29.Now the learned counsel appearing for the appellant would submit that section 57 of the NDPS Act has not been complied.

30.Section 57 of the NDPS Act reads as follows:-

"57.Report of arrest and seizure.—*Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next*



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after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior."

31.As mandated under section 57 of the NDPS Act, PW3 was duty bound to submit a report and stated in her evidence that all the events were reported to the DSP. But that report has not submitted by the prosecution before the trial court. That is the grievance of the petitioner and he would rely upon the judgment of the Hon'ble Supreme Court in ***Krishan Chand Vs. State of Haryana [(2013)2 SCC 502]***.

32.It is contended that there is no endorsement in Ex.P8. Signature in that document also differs. There is contradiction between the evidence of PW2 and PW3 with regard to the file number. In Ex.P8, time and date are differently mentioned and the documents found prepared in the typewritten form. Absolutely, there is no possibility or chance for PW3 to take any material or typewritten machine to prepare all those documents in the place itself. According to him, there is contradiction with regard to the registration number of the vehicle, in which vehicle she travelling to the occurrence place. The vehicle itself is doubtful. He would further submit that the evidentiary value of PW3 also shows that she is not a reliable person,



since he is making contra statement. He would further submit that the complainant himself has investigated a portion of the process. This itself vitiates the prosecution itself. He would further submit that sections 42, 50 and 57 of the Act were not properly complied. So, according to him, in view of the above said discrepancies, the conviction and sentence imposed upon the appellant must be set aside.

33.Per contra, the learned Additional Public Prosecutor would submit that in the course of confession statement, he has admitted that he got heroine from Bangalore and about to smuggle to Srilanka. The identity of the appellant was not disputed by him during the course of trial. There is no violation of the statutory provisions even if it is, it will not vitiate the entire prosecution, since it is a case of red handed arrest.

34.Now, we will see whether section 42 of the NDPS Act is violated.

35.Section 42 of the Act gives power to the specialised officer to make search any building or conveyance or place. But here, section 43 of the Act will come into operation, because it is a public place. It is not a building or place or conveyance. It is a seashore



area. So, the contention on the part of the learned counsel appearing for the appellant that section 42 of the Act will apply is not correct on record. Section 43 empowers an officer of any Department mentioned in section 42 in making seizure.

36. Reading of the evidence of PW3 indicates that right of the accused to be searched in the presence of the any Specialised Officer were intimated. But the accused permitted the search to be undertaken by PW3. Consent letter was also obtained.

37. Now we will see the consent letter under Ex.P1. The accused has not disputed and denied the signature in Ex.P1. He can not now say that the consent letter was not obtained.

38. Now coming to the main aspect of travelling to the place of occurrence, PW3 has stated that along with the other police team, she went to the place of occurrence. During her chief examination, she has not mentioned any vehicle number. Similarly, during the course of cross examination only, PW1 has stated that they went to the place of occurrence in a Bolero Car. But the number is not mentioned by him.



39.PW2 the Village Administrative Officer has not stated anything about the vehicle in which PW1 and PW3 travelled during the chief examination. During the cross examination, he has stated that PW1 and PW3 came to the place in a Jeep. He has not mentioned anything about the registration number. In the absence of any such basic fact in the evidence, such an argument is not available to the appellant that since the witnesses differs in the type of the vehicle, the visit itself must be doubted is not available to him.

40.The next contention is with regard to the typewritten form of the document. Ex.P1 is the format brought to the place of occurrence in blank.

41.With regard to the certain aspects, it appears that it was filled up in hands. Similarly, Ex.P2 is also handwritten document namely recovery mahazar. Ex.P3 is the arrest memo is also in the handwritten form. Exs.P4 and P5 are of in the hand written form. When it is so, the contention on the part of the appellant that those documents could not have been prepared in the place of occurrence is also not available to him. There is no violation of mandatory provisions, when we compare the entire records.



42.Now we will go to the judgment of the trial court to find out whether anything is required to be interfered.

43.Reading of the judgment of the trial court does not indicate that it suffers from perversity or illegality.

44.Now as per the chemical report, it stands established that it is a component of Diacetyl Morphine of which is a contraband and not a Psychotropic Substance as mentioned in Schedule I of the NDPS Act. So, the accused was acquitted under section 22 of the NDPS Act, but convicted under section 8(c) r/w 21(c) and 23 of the NDPS Act. Since it is a commercial quantity, the trial court imposed punishment of 10 years RI each for the offences under section 8(c) r/w 21(C) and 23 of NDPS Act as mentioned above.

45.Reading of the entire materials available on record shows that the accused was arrested red handed and he was found in possession of heroin weighing about 500 grams, which is a narcotic drug prohibited under the provisions of the NDPS Act. No proper explanation was offered by the accused as to the possession. Nothing has been brought on record to discard the evidence of PW1 to PW3. Non-examination of the public or private witnesses may



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not affect the case of the prosecution. We cannot expect the independent witness namely the public to be involved as witness in such matters.

46.As mentioned above, circumstance also clearly shows that the appellant came to India in a fake Passport overstaying here in an illegal manner and about to smuggle the contraband to Srilanka. From where, he purchased the heroin was not established by the prosecution during the course of trial and was not found out during the course of the investigation. But that itself will not vitiate prosecution. Possession itself is sufficient. It is for the accused to explain the reason for the possession.

47.As mentioned by the trial court, no proper explanation was offered by the accused, naturally presumption is available in favour of the prosecution has not been dispelled by the accused.

48.For all those reasons stated above, I find that the judgment of the trial court is perfectly legal and find no reason to interfere.



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49.In the result, this criminal appeal fails and
the same is **dismissed**.

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To,

- 1.The Additional District and Sessions Judge,
Special Court for EC and NDPS Act cases,
Pudukkottai.
- 2.The Deputy Superintendent of Police,
NIB-CID,
Ramnad District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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