



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.04.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.196 of 2023
and
CrI.M.P.(MD).No.4271 of 2023

Raja

... Appellant

Vs.

State rep by
The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
(Crime No.30 of 2012)

... Respondent

PRAYER: Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code, to call for the records and set aside the impugned judgment passed in C.C.No.204 of 2013, dated 24.01.2023, by the learned I Additional Special Court for NDPS Act Cases, Madurai.

For appellant : Mr.S.Selvakumar

For respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



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JUDGMENT

The accused who is the sole accused in C.C.No.204 of 2013 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai, has filed this Criminal Appeal before this Court challenging the conviction and sentence imposed against him in the impugned judgment dated 24.01.2023. The conviction and sentence is as follows:

<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
8(c) r/w 20(b)(ii)(B) of the NDPS Act	three years R.I and to pay a fine of Rs.10,000/- in default to undergo two weeks S.I

2.The case of the prosecution is that on 06.02.2012 at 09.00 a.m., P.W.4 received the secret information about the illegal transportation of Ganja. On the same day, when P.W.4 along with other police officials were on patrolling duty near E.B.Colony Junction, Batlagundu to Nilakottai Main Road, the appellant, was seen with a black colour leather bag and, on seeing the police party he tried to run away from the place. They caught the appellant and on enquiry found that his name is Raja. Thereafter, P.W.4 informed him that they wanted to search him and they made a search on him and was found in possession of 8 kgs of Ganja and



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recovered the same and took the samples following the procedure stated in the NDPS Act. Thereafter, he arrested and brought him to the station and registered the case in Crime No.30 of 2012 and produced the accused along with the contraband before the learned Judicial Magistrate and the investigating was continued by investigation officer and he filed the final report after obtaining the chemical analysis report and examining number of witnesses. The same was taken on file in C.C.No.204 of 2013 by the learned I Additional Special Court for NDPS Act Cases, Madurai.

3.After appearance of the accused, copies of records were furnished to him under Section 207 of Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellant, framed charges under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act 1985 and the same was read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood for trial.



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4.The prosecution, in order to prove its case, had examined 4 witnesses as P.W.1 to P.W.4 and exhibited 6 documents as Ex.P.1 to Ex.P. 6 and marked three material objects as M.O.1 to M.O.3. When the accused was examined under Section 313 Cr.P.C., with regard to the incriminating evidence against him, he denied the evidence as false and further stated that a false case was foisted against him. On the side of the accused, neither the witness was examined nor documentary evidence was adduced.

5.The learned trial Judge, considering the materials and circumstances found that the accused in C.C.No.204 of 2013 was guilty and passed the conviction and sentence against the appellant as stated above. Aggrieved over the same, the present appeal is filed.

6.The learned counsel appearing for the appellant would submit that there was no compliance under Section 57 of NPDS Act. He would further submit that there are number of discrepancies between the evidence of the witnesses and there was a delay in registering the case.



He would further submit that there was a delay in producing the contraband before the special court. In the said circumstances, he seeks for acquittal of the accused.

7.The learned Additional Public Prosecutor appearing for the respondent Police would submit that when the respondent police was on routine petrol duty they found that the accused was in possession of the contraband. Thereafter, the accused was brought to the station. In view of that, there was some delay in registering case. Initially, the entire contraband was produced before the learned Judicial Magistrate along with the accused and samples also were produced. Hence, the delay in producing the contraband before the special Court is not material one. Further, Section 57 of the NDPS Act has been clearly complied with. P.W. 4 has clearly stated that P.W.2 submitted the report to P.W.4. In view of that, the learned Special Judge considered all the submissions and correctly rendered conviction. So far as the sentence of imprisonment is concerned, he stated that after the occurrence, one prohibition case was filed against him. Hence, he seeks to dismiss the same.



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8.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

9.The question in this case is whether the prosecution has established the case beyond reasonable doubt against the appellant and the conviction and sentence passed by the learned trial Judge imposed against the appellant is sustainable or not?

10.From the evidence of P.Ws.1, 2 and 4, it is clear that when the appellant was carrying the contraband near E.B.Colony Junction, Batlagundu to Nilakottai Main Road, he was intercepted by the police team and on seeing the police team, he was trying to escape from the scene of occurrence. Thereafter, the police team nabbed the appellant and found that the appellant illegally carried the contraband weighing of 8 kgs. Thereafter, the sample was taken and appellant was arrested. P.W.4 produced the entire contraband before the learned trial Judge along with



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samples. After producing the entire contraband, the learned trial Judge accepted the remand by applying his mind. In the said circumstances, the evidence of P.W.1, P.W.2 and P.W.4 are cogent and corroborated with each other in material particulars, and this Court finds no reason to disbelieve their evidence. Further, the delay in sending the contraband is immaterial. The entire contraband was produced before the learned trial judge on the date of remand itself. When the entire contraband was produced before the Court below, there was no objection on the side of the appellant and the entire contraband was also identified by P.W.1, P.W.2 and P.W.4. In the said circumstances, the delay in producing the contraband is not material. Further, Section 57 of NDPS Act has been complied with. According to P.W.1, P.W.2, P.W.4 and P.W.57 report was submitted within the stipulated time. Hence, all the contentions raised by the learned counsel appearing for the appellant deserves to be rejected.

11.However, considering the age of the appellant and also considering the incarceration period from 06.02.2012 to 22.03.2012 and from 24.01.2023 to till date and there being no similar previous



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antecedents against him, this Court is inclined to reduce the sentence alone for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act.

12.In view of the above, though the conviction passed in C.C.No.204 of 2013, dated 24.01.2023, by the learned I Additional Special Court for NDPS Act Cases, Madurai, is hereby confirmed, sentence of three years Rigorous Imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, is reduced to the period of one year and six months.

13.With the above modification, this Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

29.04.2024

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

vsg

Note: Issue Order copy on 08.01.2025



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To

- 1.The I Additional Special Court
for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
- 3.The Superintendent,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J.

*vs*g

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