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Crl.A.(MD).No.417 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.417 of 2023
and
Crl.M.P(MD)No.7736 of 2023

Karthick @ Appas Karthick

.. Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Thanjavur Town East Police Station,
Thanjavur District.
[Crime No.3 of 2019]

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records pertaining to the order made in C.C.No.10 of 2019 dated 22.12.2022 on the file of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur (FAC) and set aside the same by allowing the above appeal.

For Appellant : Mr.KM.Karunakaran

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

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The appellant is the sole accused in Crime No.3 of 2019. The learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur (FAC), by the impugned judgment dated 22.12.2022 in C.C.No.10 of 2019, convicted the appellant for the offence under Section 8(c) read with Section 20(b)(ii)(B) of the NDPS Act, 1985 and sentenced to undergo four years Rigorous Imprisonment and a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment. Challenging the same, the appellant filed this criminal appeal.

2. On 02.01.2019 at 12.00 noon, PW.4-Inspector of Police of the respondent police station received secret information that the appellant is said to have transported 1.40kg Ganja and selling the same near the Manambuchavady, Mission Church, Near Indian Bank, Thanjavur. PW.4 after recording the said information, in compliance with Section 42 of the NDPS Act, got permission from the Superior and proceeded towards the occurrence place with informer and the team with all equipment. Around 12.30 p.m, when the appellant was carrying a white colour polyethylene bag, the informer identified him and left the place. PW.4 and his team,



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stopped the appellant and after introducing themselves, they offered the statutory option under Section 50 of the NDPS Act to make a search and the appellant expressed his voluntary consent to inspect the said bag carried by him. After inspection, the team found that the appellant carried 'Ganja' which is the prohibited Narcotic Drug under the NDPS Act. Thereafter, they weighed the same and found that the total quantity was 1.500 kgms. After that, they had taken two sample weighing about 50 gms each and packed the same in a brown cover and affixed the seal and also obtained the signature of the appellant in the said samples. They also packed the remaining contraband and sealed the same and obtained the signature of the appellant. After that, they prepared the recovery mahazar and arrested the accused and brought the accused along with contraband to the station and registered the case in Crime No.3 of 2019 under Sections 8(c) read with Section 20(b)(ii) (B) of the NDPS Act, 1985. Thereafter, PW.4 prepared a detailed report under Section 57 of the NDPS Act and submitted the report to his superior officer and produced the accused along with the contraband to the jurisdictional Court. He examined further witnesses and obtained the expert opinion and filed the final report on 25.04.2019 before the Court below. The Court below furnished the copies under Section 207 Cr.P.C upon the



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appearance of the appellant, framed necessary charges and questioned him.

The accused denied the same and therefore was tried for the above offence.

3. To prove the charges, the prosecution examined PW.1 to PW.4 and exhibited Ex.P1 to Ex.P7 and marked M.O1 to M.O3.

4. The learned trial Judge questioned the appellant under Section 313 Cr.P.C, on the basis of the incriminating materials available against the appellant and the appellant denied the same. The appellant neither examined any witness nor filed any documents. The learned trial Judge after considering the entire evidence and also the material documents and the material objects, convicted and sentenced the appellant for the offence as stated supra.

5. The learned counsel for the appellant reiterated the submission stated in the memorandum of grounds and specifically made the following submissions:

(i) PW.4 prepared the computer typed information. All the recovery mahazar and other documents, are in the computer printed form and from



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that it is clear that the appellant was falsely roped in the above case.

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(ii) PW.4, who conducted the search and seizure, never complied the procedures stated under Section 52A of the NDPS Act, more particularly, he stated that as per the law laid down by the Hon'ble Supreme Court in ***Union of India v. Mohanlal*** reported in ***2016 (3) SCC 379***, they did not take any sample in the presence of the learned Special Judge or Judicial Magistrate. On the sole ground, the conviction and sentence passed against the appellant is liable to be set aside. He further elaborated the argument that the said principle is recently followed by the Hon'ble Supreme Court in ***Simarnjit Singh v. State of Punjab***, reported in ***2023 Live Law (SC)570*** and in ***Mangilal v. The State of Madhya Pradesh*** reported in ***2023 LiveLaw(SC)549***.

6. The learned Additional Public Prosecutor submitted that PW.4 and his team went to the occurrence place with all equipment including the laptop and printer. Therefore, the preparation of the documents through computer print out cannot be found fault with. The learned Additional Public Prosecutor further submitted that the non-compliance of the Section 52A of the NDPS Act is concerned, the learned counsel for the appellant



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wrongly placed the submission as against the law laid down by the Hon'ble Supreme Court in *Union of India v. Mohanlal*. The latest judgment of the Hon'ble Supreme Court is not applicable to the present case. More particularly, in the State of Tamilnadu, the entire seizure contraband along with sample is immediately produced before the jurisdictional Court at the time of the remand of the accused. Thereafter, it is kept in the custody of the Special Court. Hence, the submission of the learned counsel for the appellant that the applicability of the Mohanlal case and other latest judgment is not correct. He further submitted that in ***2021 SCC Online SC1223 [Kallu Khan v. State of Rajasthan]***, the Hon'ble Supreme Court specifically held that the direction issued by the Hon'ble Supreme Court in Mohanlal case is an administrative instruction and the same was not applicable to the seizure that took place at the spot and proper sample was taken on the spot. He also cited number of Three Judges Bench of the Hon'ble Supreme Court and other following judgments that Section 52A of the NDPS Act is wrongly argued by the learned counsel for the appellant. In this case, entire contraband along with sample was produced before the concerned Court without any delay. Hence, the conviction and sentence passed by the Court below need not be interfered. He made reliance on the



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following judgments:

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- 1.2019 (10) SCC 649 [State of Rajasthan v. Sahi Ram]
- 2.2020(20)SCC 272 [Hira Singh and another v. Union of India and another.
- 3.1994(3)SCC299[State of Punjab v. Balbir Singh]
- 4.2020(10)SCC740 [Rajesh Dhiman v. State of Himachal Pradesh]
5. 2020(2)SCC563[Surinder Kumar v. State of Punjab]
6. 2004(3)SCC453 [State of Punjab v. Makhan Chand]
7. 2021(4)SCC483 [SK.Sakkar Alias Mannan v. State of West Bengal]
8. 2022(4)SCC380 [Khet Singh v. Union of India]
- 9.2021(14)SCC592 [Jeet Ram v. Narcotics Control Bureau, Chandigarh].

7. This Court has considered the rival submissions made by both parties and also perused the records.

8.Now the question in this case is that whether the conviction and sentence passed against the appellant by the Court below for the offence under Section 20(b)(ii)(B) of the NDPS Act, 1985 is in accordance with



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law?

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9. According to the prosecution, the appellant carried the bag containing the 1.500 kgs Ganja and the same was seized by the PW.4 following the procedures stated in the NDPS Act. The evidence of PW.4 is corroborated by the evidence of the remaining witnesses-PW.1 and PW.3. Even though PW.1, PW.3 and PW.4 were subjected to cross-examination, nothing was elicited to disbelieve their version. PW.4 upon receipt of the information, reduced the same in writing and obtained permission from the higher officials. Both documents Ex.P1 and Ex.P4 were marked. In the occurrence place, no independent witnesses came forward to witness the seizure and arrest and hence the arrest and recovery was made by PW.4 in the presence of the PW.1 and PW.3. There were no circumstances, established by the appellant to disprove the version of the above witnesses. In the above said circumstances, as held by the Hon'ble Supreme Court reported in *2011 3 SCC 521, 2020 2 SCC 563, 2020 10 SCC 740*, merely because the prosecution did not examine any independent witness it would not necessarily lead to conclusion that the accused was falsely implicated and also the evidence of the official witness cannot be distrusted and



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disbelieved, merely on account of their official status. When the testimony of the police witness is trustworthy and cogent and the same can be relied to convict the accused. PW.4, after seizure of the contraband, upon preparation of the recovery mahazar and Ex.P3, arrested the accused and prepared the detailed report as required under Section 57 of the NDPS Act under Ex.P6 and the same was also communicated to the higher officials. Proper samples were taken at the spot and the same was sent to the chemical analysis and the report was obtained and proved that the seized items are Ganja, under Section 313 of Cr.P.C also the appellant did not give any explanation for the possession of 'Ganja'. In the said circumstances, as per the Section 54 of the NDPS Act, presumption arises and the same has not been rebutted by the appellant as per Section 35 of the NDPS Act. Therefore, in all aspects, the prosecution clearly proved the case beyond reasonable doubts. The above aspects were all properly considered by the learned trial Judge and hence, there is no reason to interfere with the said finding.

10.The primordial submission of the appellant that due to the non-compliance of Section 52A of the NDPS Act, the appellant ought to have been acquitted, is earlier raised before this Court in *Crl.A.(MD).No.492 and*



500 of 2022 and 347 and 577 of 2023 in the case of **Mareeswaran Vs.**

State of Tamil Nadu, and this Court considered the similar plea elaborately

and has held as follows:

Form 91 and produce the samples as well as the remaining contraband at the time of initial remand before the learned Judicial Magistrate without any delay and the learned Judicial Magistrate also verify the same and direct the prosecution to produce the same before the Special Court. After that, the sample is sent through the Special Court for chemical analysis and the remaining contraband is under the periodical supervision of the Special Court and the same is produced as physical evidence during trial and marked as Material Objects. The said Form 91 is also marked as inventory as contemplated under Section 52A of the NDPS Act. Further the material objects are also identified by the witnesses. Therefore, the Form 91 satisfied the “identity” of the contraband as per the Act. Section 52A of the NDPS Act deals only with the disposal of the seized contraband and it is not related to seizure from the scene of occurrence. When the prosecution has taken a stand that the samples were taken at the spot and the samples along with the remaining contraband were produced before the Court as physical evidence, Section 52A of the NDPS Act is not applicable. In this case as stated above, sample was taken at the spot and both samples and remaining contraband were produced before the learned Judicial Magistrate at the time of initial remand and the same was produced before the trial Court at the time of trial and same was identified by the witnesses. Therefore, Section 52A of the NDPS Act is not applicable to the facts of the case. Hence, this Court is not inclined to accept the plea of the violation of Section 52A of the NDPS Act.



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11.In this case, the sample had been taken at the spot by the Police Officer as per the notification issued by the Central Government and he has produced the contraband on the date of remand itself before the Court and also produced the contraband before the Court at the time of the trial. The contraband was identified by the witnesses. Therefore, this Court is not inclined to accept the submission of the counsel for the appellant that the non compliance of the 52A of the NDPS Act vitiated the conviction of the appellant under Section 8(c) read with Section 20(b)(ii)(B) of the NDPS Act, 1985.

12.The learned Additional Public Prosecutor submitted that earlier two NDPS cases for the “in between quantity” were registered against the appellant apart from this case. Among the two cases, one case ended in acquittal and one is ripe for trial. Considering the quantity of the contraband is 1.5 kgs of Ganja and the appellant also got acquittal in one NDPS case involving less than the commercial quantity, this Court is inclined to accept the submission of the learned counsel for the appellant that there is a bright chance for reformation, this Court is inclined to reduce the sentence from four years to 16 months of rigorous imprisonment and fine amount imposed



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by the Court below is confirmed.

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13.In the result, this criminal appeal stands partly allowed in the following terms:-

13.1.The conviction passed in C.C.No.10 of 2019, dated 22.12.2022, on the file of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur (FAC), is confirmed.

13.2.The Sentence of imprisonment of four years Rigorous imprisonment imposed by the Court below is reduced to 16 months of rigorous imprisonment.

13.3.The fine amount imposed by the Court below is confirmed with default sentence of imprisonment. Consequently, connected miscellaneous petition is closed.

12.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
PJJ/*sbm*



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To

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- 1.The Additional District Judge/Presiding Officer,
Special Court under Essential Commodities Act,
Thanjavur (FAC)
- 2.The Inspector of Police,
Thanjavur Town East Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent of Prison,
Central Prison, Trichy.
- 5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL/sbn

**Predelivery Judgment made in
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