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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.11.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No. 584 of 2023

Kottappuli @ Rajendran

... Appellant/Accused No.1

Vs.

The State Rep by is,
The Inspector of Police,
Uthappanaickanur Police Station,
Madurai District.
(Crime No.45 of 2010)

... Respondent/Complainant

Prayer : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records in C.C.No.80 of 2023 dated 12.06.2023 on the file of the learned I Additional Special Court for NDPS Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Jegadeesh Pandian

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

JUDGMENT

This appeal has been filed to set aside the proceedings passed by the learned I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.80 of 2023 dated 12.06.2023.



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2.The brief facts of the case as follows:

On 15.02.2010, P.W.3, who working as the Sub-Inspector of Police, Uthappanaickanur Police Station, Madurai District, had received the secret information about the illegal transportation of huge quantity of Ganja. On receipt of the same, he recorded it and informed to the Higher Officials and got permission as required under Section 42 of the NDPS Act. Thereafter, she went to the occurrence place along with P.W.1 and P.W.2. On 15.02.2010, at about 04.45 p.m., near Sadchipatti Masana Temple, Pasukaranpatti Road to Valanthur Road, 25 kg of Ganja from a bike bearing Reg.No.TN-59-S-0543 and 26 kg of Ganja from another bike bearing Reg.No.TN-63-B-4519 were seized. Out of 51 kg of Ganja, A1 was to take 11 kg of Ganja and A2 to A4 were to take 10 kg of Ganja each. The same was identified by P.W.3, P.W.1 & P.W.2. At that time, the appellant and the other persons were said to have tried to escape from the scene of occurrence. However, A3 was alone nabbed by P.Ws.1 to 3. They introduced to him as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. A3 consented to conduct the search by the officer himself and hence, P.W.2 conducted search and found two plastic sacks on the bikes.



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They opened the sacks and found there was Ganja. Thereafter, they seized the two sacks and took two samples from the first sack containing 25 kgs of Ganja under S1 and S2 and the remaining contraband was also properly sealed under Ex.P.1. According to P.W.1, they weighed the contraband and found the quantity to be 24.800. They also took two samples from the second sack containing 26 kgs of Ganja under S3 and S4 and the remaining contraband was also properly sealed under Ex.P.2. According to P.W.1, they weighed the contraband and found the quantity to be 25.800 kgs. Thereafter, they arrested A3 and on his confession, the appellant and the other accused were added as accused. Then, A3 was brought to the police station and FIR was registered in Crime No.45 of 2010 for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. Thereafter, P.W.3 conducted the investigation and filed the final report against 6 persons. After completion of investigation, the case was taken on file in C.C.No.235 of 2010, by the I Additional Special Court for NDPS Act Cases, Madurai. The learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and he stood for trial.



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3.To prove the case, the prosecution examined P.W.1 to P.W.4 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and produced 8 material objects as M.O.1 to M.O.8. The learned trial Judge questioned the accused under Section 313 Cr.P.C., proceedings by putting the incriminating evidence available from prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the witnesses on the side of the appellant. On the side of the appellant, no witness was examined and no documents were produced.

4. During the pendency of the trial in C.C.No.235 of 2010, since the appellant absconded and Non-bailable Warrant was issued against him and the case was split up as against him and renumbered as C.C.No.80 of 2023. In C.C.No.235 of 2010. After concluding the trial, the learned trial judge acquitted all the accused in C.C.No.235 of 2010 by the order, dated 14.03.2023.

5. The learned trial Judge, on considering the oral and documentary evidence, convicted the appellant under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act and sentenced him to undergo 10 years rigorous imprisonment and imposed a fine amount of Rs.1 lakh (Rupees One Lake Only) in default, to undergo 1 year



simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act. Thereafter, the appellant, obtained anticipatory bail and appeared before the Court below and co-operated with the trial.

6. Challenging the conviction and sentence imposed by the learned trial Judge, the present appeal has been filed.

7. The learned counsel for the appellant submitted that the learned trial Judge acquitted the remaining accused on 14.03.2023. The learned trial Judge, even acquitted the persons/co-accused from whom the contraband was recovered. Admittedly, there was no recovery from this appellant. The only allegation against the appellant is that he was present in the scene of occurrence along with the other accused and escaped from the scene of occurrence on seeing the police party. In the said circumstances, the conviction passed by the learned trial Judge, dated 12.06.2023, with a contrary finding that the was appellant involved in the illegal transportation of Ganja is not legally valid, and hence, the said finding is liable to be set aside.



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8. The learned Additional Public Prosecutor submitted that it is true that A1, A3, A4, A5 & A6 were acquitted by the learned trial Judge in the mother case in C.C.No.235 of 2010. But, the learned trial Judge, after perusing the materials available on record has held that the appellant has actively participated in the occurrence and rightly convicted him. Hence, he prayed to confirm the conviction and sentence imposed against him.

9. The case was posted for final disposal on various dates i.e., on 06.11.2024, 15.11.2024 & 18.11.2024 respectively and both counsels made detailed submissions. Today, when the matter is taken up for continuation, the learned Additional Public Prosecutor submitted that the Department has already taken a decision to prefer an appeal against the acquittal judgment passed in C.C.No.235 of 2010 dated 14.03.2023 and produced the opinion of the learned Special Public Prosecutor.

10. This Court considered the rival submissions and perused the materials available on records.



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11. The question that arises for consideration in this case is *whether the conviction under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act against the appellant passed by the learned trial Judge is in accordance with law after acquitting all the accused in mother C.C.No.235 of 2010.*

12. According to the prosecution, P.W.3, the Sub Inspector of Police attached with the respondent police received the secret information on 15.02.2010 about the illegal transportation in the Pasukaranpatty Road. Therefore, P.W.3 along with a team of Police Officers went to the scene of occurrence along with the informer. At that time, the appellant and the other accused carried the ganja in two bags in separate two wheelers. Both two wheelers were identified by the Informer and P.W.3. P.W.3 and her team intercepted the same. At that time, except A3, all the other accused escaped from the scene of occurrence. From A3, a huge quantity of Ganja i.e., 51 kg of Ganja was recovered and he disclosed the names of the escaped accused. Thereafter, all the accused were arrested including the appellant. Subsequently, final report was filed against the all the appellants and the same was taken on file in C.C.No.235 of 2010 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. After examination of the witnesses, the appellant failed to appear



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during the course of one hearing. Therefore, a Non-bailable Warrant was issued and C.C.No.235 of 2010 was split up and renumbered as C.C.No.80 of 2023 against the appellant. The proceedings in C.C.No.235 of 2010 continued as against the remaining five accused. In the said trial, the learned trial Judge has found that the prosecution has not proved the possession of ganja and also not proved the case beyond reasonable doubt. Thereafter, the appellant obtained anticipatory bail before this Court and appeared before the learned trial Judge in the split up case in C.C.No.80 of 2023. A separate trial was conducted by examining P.W.1 to P.W.4 and marking the Ex.P.1 to Ex.P.12 and Mos No.1 to 8. The learned trial Judge, convicted the appellant for the charged offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.

13. In the considerable opinion of this Court, the conviction of the learned trial Judge against the appellant is not in accordance with law. In the mother C.C.No.235 of 2010, the learned trial Judge has held that the prosecution has not proved the case against the accused No.1, 3, 4, 5 & 6. There was a specific finding that the possession and the recovery were not proved. In the said circumstances, without any incriminating circumstances, the learned trial Judge convicted the appellant. Once the main accused were acquitted, the conviction



against the appellant is not legally sustainable on the same set of evidence. More particularly, no evidence is available on record to prove the exclusive possession of the contraband by the appellant.

14. From the available evidence, it is seen that there is no evidence to convict this appellant under Section 8(C) r/w 20(b)(ii)(c), of NDPS Act. The Honourable Supreme Court held that the conviction of the accused on the basis of the confession of the co-accused without any of other substantive evidence is not sustained and the same is fortified by the judgment of the Hon'ble Supreme Court in **Surinder Kumar Khanna v. Directorate of Revenue Intelligence, (2018) 8 SCC 271**.

“13.In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court”



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15. In this case, the learned trial Judge framed the charge 8(c) r/w 20(b)(ii) (C) of NDPS Act r/w 34 of IPC and 25 NDPS Act. When all the accused were acquitted, the conviction against this appellant alone under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act, is not legally sustainable. In the said circumstances, this Court is inclined to allow this appeal and set aside the conviction and sentence imposed against him.

16. Insofar as the submission made by the learned Additional Public Prosecutor that the Department has taken a decision to prefer an appeal, is concerned, it will not make any hindrance to this Court to pass the judgment. This Court independently assesses the evidence available against the appellant apart from the judgment delivered in C.C.No.235 of 2010 dated 14.03.2023. Further, the learned Additional Public Prosecutor produced only the opinion of the learned Special Public Prosecutor to prefer an appeal against C.C.No.235 of 2010. As per the Roster, the appeal was posted before this Court, and hence, this Court, without any option, decided the matter on merits on the basis of the submission made by both sides.

17. As discussed above, this Court finds no material to convict the appellant for the offence under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act.



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18. Accordingly, this appeal is allowed, and the conviction and sentence imposed against the appellant is set aside on the following terms:

18.1. The judgment passed by the learned learned I Additional Special Court for NDPS Act Cases, Madurai, in C.C.No.80 of 2023 dated 12.06.2023, is set aside.

18.2. The appellant is acquitted from all the charges in C.C.No.80 of 2023 dated 12.06.2023, passed by the learned I Additional Special Court for NDPS Act Cases, Madurai.

18.3. Fine amount paid by the appellant shall be refunded to the appellant forthwith.

18.4. Bail bond executed by the appellant shall stand cancelled.

20.11.2024

NCC : Yes / No
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K.K.RAMAKRISHNAN,J.

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To

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

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