



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	18.12.2024
Pronounced On	:	20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.607 of 2023

Vijaya

... Appellant

Vs.

State rep by
The Sub Inspector of Police,
NIB CID,
Theni

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records in C.C.No.111 of 2017 relating to the judgment dated 26.05.2023 passed by the Principal Special Court for EC & NDPS Act, Cases, Madurai, and set aside the judgment of conviction on the appellant/accused.

For appellant : Mr.N.Pragalathan

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



WEB COPY

JUDGMENT

The accused in C.C.No.111 of 2017 on the file of the Principal Special Court for EC & 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 26.05.2023. 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	5 years R.I and to pay a fine of Rs.50,000/- in default to undergo 6 months R.I

2. According to the prosecution, on 27.08.2016 at about 07.00 hours, P.W.2 received the secret information regarding transportation of Ganja by the appellant. He recorded the said information in the General Diary and informed the same to his superior/P.W.3 and obtained the permission and proceeded to the occurrence place along with his team and the informer. The informer identified the accused who was coming along with the white colour plastic gunny bag. Thereafter, P.W.2 surrounded the appellant and made a search on him under Ex.P1/Search



WEB COPY

Consent Letter and recovered the contraband of 12 Kgs of Ganja in the white colour plastic Gunny Bag and took the sample following the procedure stated in the NDPS Act. Then, they arrested the accused and produced him before the Station and registered the case and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by the Investigating Officer and he filed the final report after obtaining the Chemical Analysis Report and examining the witnesses. The learned trial Judge has taken the same on file in C.C.No.111 of 2017.

3. After appearance of the accused, copies of records were furnished to him under Section 207 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 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.



WEB COPY

4.The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 13 documents as Ex.P.1 to Ex.P.13 and marked three material objects as M.O.1 to M.O.3.

5.When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against him, he denied the evidence as false and further stated that a false case was foisted against him. The accused neither produced any documents nor examined any witness on his side.

6.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.111 of 2017 was guilty and passed the conviction and sentence against the appellant as stated above.

7.The learned counsel for the appellant made the following submissions:-

7.1.There was a delay of 34 days to produce the contraband before the Court below and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.



WEB COPY

7.2.He further submitted that there is no compliance of Sections 42 & 50 of NDPS Act, in letter and spirit. Therefore, the conviction and sentence passed against the appellant is to be set aside.

7.3.Further, he submitted that there was no proper explanation for the discrepancies in the weight of sample produced before the Forensic Science Laboratory.

7.4.Non examination of the independent witnesses is an additional circumstance which creates doubt over the recovery of the contraband as alleged by the prosecution.

7.5.There was no compliance of Section 57 of the NDPS Act.

Hence, he seeks to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.



WEB COPY

8.The learned Additional Public Prosecutor made the following submissions:-

8.1.Delay in producing the contraband before the Court below is not material lapse, to acquit the appellant, when the entire contraband was produced before the Court below at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate and thereafter, the same was produced before the Special Court.

8.2.The said contraband was marked as material object before the trial Court without objection and hence, the contention of the learned counsel for the appellant is not legally sustainable.

8.3.The Hon'ble Constitution Bench of the Supreme Court in *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120 reiterated the principle that the non-examination of the independent witnesses is not a circumstances to disbelieve the evidence regarding recovery, when the other evidence are cogent and trust worthy. In this case, the learned trial Judge has considered the entire evidence to hold that the recovery was proved in accordance with law.



WEB COPY

8.4. In this case, the recovery was made from the bag of the appellant and hence, the procedure under Section 50 of the NDPS Act is not applicable. The contraband reached the chemical analyst and test was conducted after a period of time from the date of recovery and hence, variation of weight of 03.00 grams is possible and the seal was intact and hence, the submission of the learned counsel for the appellant is not acceptable.

8.5. In all aspects, the prosecution clearly proved the case through the evidence and contemporaneous documents.

Therefore, he seeks confirmation of the conviction and sentence imposed on the appellant.

9. 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 and the precedents relied upon by them.



WEB COPY

10. The question arises for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellants and the learned trial Judge's conviction and sentence imposed against the appellant can be sustained or not?*

11. P.W.2 had received the secret information about the illegal transportation of Ganja by the appellant on 27.08.2016 at 07.00 am. Thereafter, after making entry in the General Diary and reduced in writing and the same was sent to the higher officer under Ex.P5. In Ex.P5, there is a clear mention about the information furnished to the superior and the same was done as per the compliance of the Hon'ble Constitution Bench judgment in the case of *Karnail Singh Vs. State of Haryana* reported in (2009) 8 SCC 539. The said document was marked and there was no dispute over the said document. Even though, they are subjected to the cross examination, nothing was elicited to disbelieve the said documents. Therefore, in this case, the procedure under Section 42 of the NDPS Act, is complied with. P.W.2 after recording the information and



WEB COPY

complying the procedure under Section 42 of the NDPS Act, he proceeded to the occurrence place as stated by the informer, namely, Uthamapalayam Bus stand on 27.08.2016 at about 08.00 am. By following the procedure, he recovered the contraband from the gunny bag carried by the appellant. The said evidence of P.W.2 corroborated with the evidence of P.W.1. Both were subjected to cross examination and nothing was elicited to disbelieve their version. Further, in the evidence of P.W.1 and P.W.2, there are no material contradictions and discrepancies between their version relating to the recovery of the contraband. Their evidence are cogent and trust worthy. No material was elicited to disbelieve their version or any case of false implication. Therefore, the recovery was proved in accordance with law.

12.P.W.2, had taken the sample from the bag carried by the appellant and properly sealed and the remaining contraband also was properly sealed. Then, they prepared mahazar and brought the accused, remaining contraband and the samples to the police station and registered the case. Thereafter, he prepared the report under Section 57 of



WEB COPY

the NDPS Act and submitted to P.W.3. P.W.3 clearly deposed about the receipt of the information under Section 42 of the NDPS Act and also the report submitted by P.W.2. He also deposed about the fact that the accused along with contraband under Form-91 was produced before the Court at the time of remand itself. There was no delay in producing the entire contraband along with the sample taken under M.O.1 to M.O.3. The chemical analyst also in his report, marked as Ex.P.13 about the presence of cannabis in the sample produced before him. Therefore, in all aspects, the prosecution clearly proved the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. This Court finds no merit in the contention of the learned counsel for the appellant to disbelieve their version. Hence, the conviction and sentence imposed by the learned trial Judge is hereby confirmed.

13.The appellant is inside the prison for more than 2 years. Considering the fact that she has no antecedents prior to the occurrence and after the occurrence and the appellant being a lady and widow with two children, this Court is inclined to reduce the sentence from 5 years to 2 ½ years.



WEB COPY

14. Accordingly, this Criminal Appeal is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act in C.C.No.111 of 2017, by the Principal Special Court for EC & NDPS Act, Cases, Madurai, vide judgment dated 26.05.2023, is hereby confirmed.

(ii) the sentence of imprisonment to undergo five years rigorous imprisonment and a fine of Rs.50,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act;

is modified into

“to undergo 2 ½ years of rigorous imprisonment for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act; and the judgment relating to the fine amount is hereby confirmed”.

20.12.2024

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

sbm

Note: Issue order copy on 24.12.2024



WEB COPY



K.K.RAMAKRISHNAN.J.

sbn

To

- 1.The Principal Special Court for EC & NDPS Act, Cases,
Madurai.
- 2.State rep by,
The Sub Inspector of Police,
NIB CID, Theni.
- 3.The Superintendent of Prison,
Central Women 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.

Crl.A.(MD).No.607 of 2023

20.12.2024