



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:18.12.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.697 of 2023

Chinnaiyan

... Appellant

Vs.

State rep by
The Inspector of Police,
Thanjavur West Police Station,
Thanjavur District.
(Crime No.1708 of 2020)

... Respondent

PRAYER: Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code, to call for the records relating to the judgment in C.C.No.16 of 2021 dated 28.06.2023 on the file of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, and set aside the same and allow this Criminal Appeal.



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For appellant : Mr.R.Maheswaran

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

JUDGMENT

The accused is the sole accused in C.C.No.16 of 2021 dated 28.06.2023 on the file of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, has filed this Criminal Appeal before this Court challenging the conviction and sentence passed against him in the impugned judgment dated 28.06.2023. 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, 1985	Five years R.I and to pay a fine of Rs.20,000/- in default to undergo one year R.I

2. According to the prosecution, on 08.11.2020, at 2.00 p.m., P.W.3 received the secret information about the illegal transportation of Ganja by the accused. He reduced it in writing and recorded the said information under Ex.P3, in the General Diary and informed the same to



his superior/P.W.3 and obtained the permission and went to the occurrence place along with P.W.1, Head Constable and informer. The informer identified the accused, who was standing and on seeing the police team, the accused tried to escape, but he was surrounded by them. After surrounding him, P.W.3 enquired him and he told his name and address. Thereafter, the police complied the provision under Section 50 of NDPS Act, and made a search and at that time, the accused voluntarily handed over the white colour polythene bag containing dried leafs and seeds with ganja odour. On enquiry, the accused stated that he received the same from one unknown person in the Pudukottai Bus Stop for earning his livelihood. Thereafter, P.W.3 police seized the white colour bag from the accused and it was found to contain 1.200 kgs of Ganja and two 50 gms of Ganja were taken as sample. Thereafter, P.W.3 arrested the accused under Ex.P4/ Arrest memo and produced him before the Station and registered the case in Crime No.1708 of 2020 for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, under Ex.P6. Thereafter, the accused was produced along with the contraband before the learned Judicial Magistrate and the investigation was continued by the



investigation officer and he filed the final report after obtaining the chemical analysis report and also examining number of witnesses. The learned trial Judge has taken the same on file in C.C.No.16 of 2021.

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)(C) 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.

4.The prosecution, in order to prove its case, had examined 3 witnesses as P.W.1 to P.W.3 and exhibited 9 documents as Ex.P.1 to Ex.P.9 and marked three material objects as M.O.1 to M.O.3.



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5. When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating aspects against them, they denied the evidence as false and further stated that a false case was foisted against them. The accused neither produced any document nor examined any witnesses.

6. The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.16 of 2021 was guilty and passed the conviction and sentence against the appellant as stated above.

7. The learned counsel appearing for the appellant submitted that according to the prosecution, P.W.3 received the secret Information and hence, they are duty bound to comply the mandate mentioned under Section 42 of the NDPS Act and the same was not complied with. Except the police officials, no independent witness was examined. There was a delay in sending the sample to the chemical analysis lab and also the recovered contraband was produced before the Court below after four days. Therefore, the said infirmities create doubt over the seizure of



recovered contraband from the accused/appellant. The same was not considered by the learned trial Judge. Hence, he seeks for acquittal.

8. The learned Additional Public Prosecutor appearing for the respondent Police submitted that the prosecution clearly proved the case by examining P.Ws.1 to 3 and also marking of documents Ex.P.1 to Ex.P.5. The secret information was received by P.W.3 and the same was reduced in writing and marked under Ex.P3 and informed the same to the higher officer and got permission. Hence, there was no violation of compliance under Section 42 of NDPS Act. He further submitted that P.W.1 and 3 clearly deposed about the recovery and there is no contra evidence produced by the appellant to believe his evidence. The learned trial Judge correctly appreciated the evidence and convicted the appellant for the offence under Section 8(c) r/w 20(b)(ii)(B) of the NDPS Act, 1985. He also reiterated the finding of the learned trial Judge. Hence, he seeks to dismiss this appeal.



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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 impugned judgment.

10.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 against the appellant can be sustained or not?

11.From the evidence, it is clear that as per Ex.P3, there was strict compliance of Section 42 of NDPS Act. P.W.3 received the secret information and reduced in writing and informed the same to the higher officer namely, Deputy Superintendent of Police, Vallam Utkottam, Thanjavur and the said document is marked as Ex.P3. The same was not questioned by the appellant during the cross examination. P.W.1 to P.W.3 cogently deposed about the recovery of contraband from the appellant. They also have deposed about the taking of the sample and packing the



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remaining contraband affixing the seal. The recovered contraband and the samples were produced before the Court at the time of remand. The remaining contraband also was marked during the course of the trial. The Expert also gave opinion that the recovered contraband contained cannabis. In view of the above specific evidence of the prosecution, the learned trial Judge correctly held that the prosecution clearly proved the case against the appellant. This Court finds no material to differ with the finding of the learned trial Judge. Hence, the conviction passed by the learned trial Judge is liable to be confirmed.

12.However, considering the special circumstances and also considering the fact that the appellant has no previous case, this Court is inclined to reduce the sentence from 5 year Rigorous Imprisonment to the period of sentence **already undergone** for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

13.In view of the above, this appeal is partly allowed with the following directions:



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13.1.The conviction passed by the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, in C.C.No.16 of 2021 dated 28.06.2023 is hereby confirmed.

13.2.The sentence imposed by the trial judge is hereby reduced from 5 years Rigorous Imprisonment to the period of nine months, which was already undergone by the appellant.

13.3.Fine amount with default sentence is hereby confirmed.

18.12.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

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To

- 1.The learned Additional District Judge/
Presiding Officer,
Special Court under Essential Commodities Act,
Thanjavur.
- 2.The Inspector of Police,
Thanjavur West Police Station,
Thanjavur 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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K.K.RAMAKRISHNAN.J.

*vs*g

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