



Crl.A.(MD).No.968 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD) No.968 of 2023
and
Crl.M.P(MD) No.15349 of 2023

Raja

... Appellant / Accused

Vs.

The State represented by its,
The Inspector of Police,
NIB CID,
Dindigul District.
(Crime No.08 of 2007)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records in C.C.No.138 of 2009 relating to the judgment dated 09.06.2023 passed by the I Additional Special Court for NDPS Act Cases, Madurai and to set aside the judgment of the conviction on the appellant/accused.

For Appellant : Mr.S.Selva Kumar

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



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JUDGMENT

This appeal has been preferred challenging the judgment passed in C.C.No.138 of 2009, dated 09.06.2023, by the I Additional Special Court for NDPS Act Cases, Madurai.

2. The appellant is the sole accused in C.C.No.138 of 2009 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. He filed an appeal, challenging the conviction and sentenced passed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, vide order dated 09.06.2023. According to the prosecution, P.W.2 has received an information about the illegal transportation of Ganja. After recording the said information in writing under Section 42 of NDPS Act, he informed the same to his superior officer P.W.3. After obtaining suitable permission from P.W.3, P.W.1 and P.W.3 made a search on the appellant and recovered the said contraband. During course of the proceedings, they have followed the procedure under Section 50 of the NDPS Act and other formalities enumerated in the NDPS Act and Rules. Thereafter, the accused was arrested and he was brought to the respondent Police Station. The



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respondent Police has registered a case in Crime No.8 of 2007 for the offences under Section 8(c) r/w. Section 20(b)(ii)(b) of NDPS Act. Thereafter, the Final Report was filed by the P.W.3 and the same was taken on file in C.C.No.138 of 2009 before the I Additional Special Court for NDPS Act Cases, Madurai. After that, the accused was called and copies of all documents were served to him under Section 207 Cr.P.C. Thereafter, the learned trial Judge has questioned the accused and at that time, the accused has pleaded not guilty.

3. To prove the charges made by the prosecution, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.11 were marked and M.O.1 to M.O.3 were marked. Neither defence witness nor documents were marked on the side of the appellant/accused.

4. Thereafter, the learned trial Judge has questioned the accused under Section 313 of Cr.P.C., by putting incriminating materials against him. The appellant denied his complicity and stated that a false case has been foisted against him for statistical purpose. Thereafter, the learned trial



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Judge has considered all the evidence, convicted the appellant/accused for the offence under Section 8(c) r/w. 20(b)(i)(B) of NDPS Act and sentenced him to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment. Challenging the same, the appellant has preferred this appeal.

5. The learned counsel for the appellant made a submission that in this case, Sections 50 and 57 of NDPS Act were not complied. Hence, the entire conviction and sentence imposed on the appellant/accused, passed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, is liable to be set aside. Further, there was a delay in sending the samples and it was not explained by the Investigation Officer before the Court below. He further submitted that the appellant is inside the jail for the past 259 days and no case was registered against him before and after the occurrence. Hence, he prays this Court to reduce the sentence.

6. Per contra, the learned Additional Public Prosecutor would submit that on receipt of the information by P.W.2, it was recorded in



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writing and transmitted to P.W.3. After obtaining proper permission from P.W.3, he made a search. Further, at the time of seizure of the contraband, P.W.2 has followed all the procedure stated in the NDPS Act and there was no infraction of either Section 50 or 57 of the NDPS Act. Further, at the time of remand of the accused, entire contraband was produced before the learned Judicial Magistrate along with the samples. Hence, the argument of delay in producing the said samples before the learned Special Judge can not be accepted. Even though, the accused has no previous case before and after the occurrence, considering the quantity of the contraband, reduction of sentence passed by the learned I Additional Special Judge for NDPS Act Cases, Madurai, can not be accepted. Hence, he seeks dismissal of the appeal.

7. This Court has considered the rival submissions and also perused the records and impugned judgment.

8. P.W.2 has received a secret information about the illegal transportation of Ganja near Mattuppathai Junction in Ottanchathiram to



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Palani Main Road and the same was recorded by P.W.2 and he transmitted the said information to P.W.3. P.W.3, upon receipt of the said information, directed to conduct raid and proceed as per law. As per the permission, he and P.W.1 went to the place of occurrence, intercepted the accused and they found that the accused was carrying the contraband weighing about 5 Kgs of Ganja and thereafter the samples were taken. After taking samples, along with remaining contraband, the accused was brought to the Police Station and a case was registered in Crime No.8 of 2007 for the offence under Section 8(c) r/w. Section 20(b)(ii)(b) of NDPS Act. Thereafter, the accused was produced along with contraband before the concerned Judicial Magistrate and report under Section 57 of NDPS Act was submitted to P.W.3. On receipt of the said report, P.W.3 continued the investigation and filed the Final Report before the concerned Court and the same was taken on file in C.C.No.138 of 2009.

9. From the narration of above events, it is seen that P.W.1 and P.W.2 have clearly deposed before the Court below about the compliance of section 50 of NDPS Act and also recovery of the contraband.



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10. This Court finds nothing to disbelieve the evidence of P.W.1 and P.W.2. P.W.1 clearly deposed about the recovery of the contraband and about taking of samples. P.W.2 corroborated the same without any infirmity. In the said circumstances, this Court believes the evidence of P.W.1 and P.W.2. Apart from that, the entire contraband was produced before the Court below at the time of trial and the same was identified by the P.W.1 and P.W.2. In the said circumstances, the prosecution has proved the case beyond all the reasonable doubt. The arrest, recovery of the contraband and chemical analysis report also confirmed that the said contraband is a prohibited item under the NDPS Act. In the said circumstances, this Court finds no merit in the contention of the appellant on the following discussions:

10.1. The learned counsel for the appellant submitted that Section 57 of NDPS Act is not complied with. P.W.3 clearly stated that he received the report from P.W.2 and he continued the investigation. This Court perused the evidence of P.W.2 and also the report filed under Section 57 of NDPS Act and the same was in accordance with law. Hence, the contention of the appellant is not acceptable.



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10.2. So far as delay of 11 days in transmitting the contraband from the Court of concerned Judicial Magistrate to the Special Court is concerned, as rightly pointed by the learned Additional Public Prosecutor that the contraband along with samples was produced before the learned Judicial Magistrate and the same was recorded. In the said circumstances, the said submission has not been taken.

10.3. So far as the compliance of Section 50 of NDPS Act is concerned, according to the prosecution, the appellant carried the contraband in a bag. Hence, Section 50 of NDPS Act is not applicable in this case. In all aspects and the contention of the appellant is not acceptable. Hence, the conviction passed by the learned trial Judge is confirmed.

11. As far as the sentence passed by the learned Special Judge is concerned, the appellant has already undergone 259 days and considering the submissions made by the learned Additional Public Prosecutor that the appellant has no previous cases either before or after the occurrence, this



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Court is inclined to reduce the sentence imposed on the appellant/accused from two year Rigorous Imprisonment to the period already undergone.

12. With the above observations, this Criminal Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed.

26.04.2024

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

Indu/sbn

To

- 1.The I Additional Special Court for
NDPS Act Cases, Madurai.
- 2.The Inspector of Police,
NIB CID, Dindigul 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,
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