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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	29.11.2024
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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.1033 of 2024
and
CrI.M.P.(MD).No.12818 of 2024

Muthu

... Appellant

Vs.

State rep by
The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
(Crime No.77 of 2015)

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of BNSS, 2023/ under Section 374(2) of Criminal Procedure Code, to call for the records and allow above appeal and set aside the conviction and sentence passed by judgment dated 16.02.2024 in C.C.No.328 of 2016 on the file of the learned II Additional Special Judge for NDPS Act, Cases Madurai.



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For appellant : Mr.R.Tharun Athithiyan

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

JUDGMENT

The accused in C.C.No.328 of 2016 on the file of the II Additional Special Court for 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 16.02.2024. 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	15 months R.I and to pay a fine of Rs.10,000/- in default to undergo 4 months S.I

2. According to the prosecution, on 02.09.2015 at about 9.00 am., P.W.3/Sub-Inspector of Police received the secret information about the illegal transportation of Ganja by the accused. He recorded the said information and sent the same to his superior/Inspector of Police and



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obtained the permission and went to the occurrence place along with his team and the informer. The informer identified the accused. After the identification, P.W.3 and his team intercepted the accused and when he was attempting to escape from the scene of occurrence, they caught hold of him and informed him about the right of conducting a search in the presence of the learned Magistrate or the Gazetted Officer, for which, he gave consent letter under Ex.P1 to conduct search by P.W.3 himself. During the search, they found gunny bag containing 5.00 Kgs of Ganja and the same was seized by the police officials under Ex.P.2 and arrested the appellant. Thereafter, the investigation was continued and the final report was filed after obtaining the chemical analysis report and examining number of witnesses, before the learned II Additional Special Judge for NDPS Act Cases, Madurai. The same was taken on file in C.C.No.328 of 2016.

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 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 4 witnesses as P.W.1 to P.W.4 and exhibited 8 documents as Ex.P.1 to Ex.P.8 and marked two material objects as M.O.1 and M.O.2.

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.328 of 2016 was guilty and



passed the conviction and sentence against the appellant as stated above.

7. Mr.R.Tharun Athithiyan, learned counsel appearing for the appellant made the following submissions:-

7.1. The learned counsel for the appellant submitted that there is a failure of compliance of the requirement of Sections 42, 50, 52 and 57 of NDPS Act and hence, the appellant is entitled to acquittal. According to the prosecution, the recovery of 5.100 kgs of Ganja was made from the appellant near the burial ground at Alagapuri, Palani Taluk, and this is highly doubtful, on the account of non-examination of the independent witness.

7.2. He further submitted that the learned trial Judge has imposed sentence of 15 months Simple Imprisonment and directed to pay fine of Rs.10,000/- with default sentence of 4 months Simple Imprisonment. One of the said sentence, he has already undergone more than 14 months and 10 days and hence, he seeks for reduction of sentence.



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8. Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor made the following submissions:

The learned Additional Public Prosecutor submitted that P.W.1 and P.W.3 clearly deposed about the recovery of 5.100 kgs from the appellant. The sample was properly taken and the remaining contraband was also properly packed and produced before the learned Judicial Magistrate at the time of remand. The appellant has not furnished any explanation during the questioning under Section 313 of Cr.P.C. In the said circumstances, the learned trial Judge has correctly convicted him and taking into account of one previous case of similar nature, the learned trial Judge has imposed 15 months of simple imprisonment. Therefore he seeks to dismiss the appeal.

9. This Court considered 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.



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10. The question 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.1 and P.W.3 clearly deposed about the recovery of the contraband from the appellant on 02-09-2015 near burial ground at Alagapuri, Palani Taluk. They properly conducted search and recovered the contraband from the appellant and took the samples and produced the samples along with remaining contraband packed with seal before the learned Judicial Magistrate at the time of the remand of the accused. In the said circumstances, the evidence of P.W.1 and P.W.3 are cogent and trustworthy. Even though, they are subjected to the lengthy cross examination nothing was elicited to disbelieve their testimony. The chemical analysis report is also filed. In the said report, it is specifically stated that the samples are intact and the remaining contraband was properly sealed without tampering and produced at the time of trial and



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the same had been identified by P.W.1 and P.W.3.

12. In view of the above circumstances, this Court does not find any infirmity in the prosecution case. Therefore, this Court confirms the finding of the learned trial Judge that the prosecution proved beyond reasonable doubt that the appellant was found with possession of the 5.100 kgs of Ganja. Hence the appellant is liable to be convicted for the offence under Sections 8(c) r/w 20(1)(ii)(b) of the NDPS Act.

13. The appellant is confined in prison and he has already undergone imprisonment of 14 months and 10 days and considering his incarceration and also his good behaviour in jail, this Court is inclined to reduce the sentence to the period already undergone.

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

The conviction under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act passed by the learned II Additional Special Judge,



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Special Court for NDPS Act cases, Madurai, dated 16.02.2024, in C.C.No.328 of 2016, is hereby confirmed; Sentence of Imprisonment of 15 months R.I is reduced to the period already undergone. The appellant is directed to be released forthwith his confinement is not required in any other case.

Consequently, connected criminal miscellaneous petition is closed.

29.11.2024

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

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Note: Issue Order copy on 03.12.2024



To
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- 1.The II Additional Special Court for EC and NDPS Act cases,
Madurari.
- 2.The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
- 3.The Superintendent of Prison,
Central 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.



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K.K.RAMAKRISHNAN.J.

sbn

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