



Crl.A.No.231 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.231 of 2023
and
Crl.M.P.No.3231 of 2023

Elayaraja

..... Appellant

Vs

State by
Inspector of Police,
NBCID, Coimbatore.

..... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to set aside the impugned order dated 09.05.2022 passed by the learned Additional District Judge & Presiding Officer, Special Court under EC Act/NDPS Act, Coimbatore in C.C.No.41 of 2020 and allow this appeal and acquit the accused.

For Appellant : Mr.M.S.Ramesh
For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been preferred as against the Judgment dated 09.05.2022 passed in C.C.No.41 of 2020 on the file of the learned Additional District Judge and Presiding Officer, Special Court under EC Act/NDPS Act, Coimbatore, thereby convicted the appellant

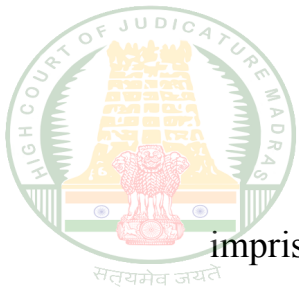


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for the offences punishable under Section 8(c) r/w 20(b)(ii)(C) of
Narcotic Drugs and Psychotropic Substance Act, 1985.

2. The case of the prosecution is that P.W.1 received a secret information at about 12.00 p.m. and proceeded to the scene of occurrence along with his team. They identified the accused, after obtaining a consent letter from the superior officer, and conducted a search. During the search, they found the accused in possession of two bags, each containing 11 kilograms of Ganja. After completion of all formalities, the accused was taken to police station and a FIR was registered in Crime No.17 of 2020 for the offence under Section 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substance Act, 1985.

3. On the side of the prosecution, P.Ws.1 to 4 were examined and Exs.P1 to P9 were marked. The prosecution had also produced M.Os.1 & 2. On the side of the accused, no witnesses were examined and no documents were marked. . On perusal of oral and documentary evidence, the Trial Court found the appellant guilty of the offence under Section 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substance Act, 1985 and sentenced him to undergo rigorous



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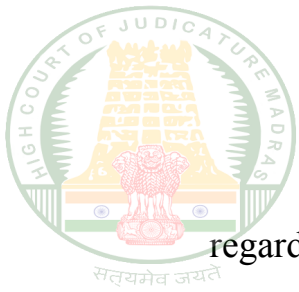
imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-,

in default, to undergo rigorous imprisonment for a period of two years.

Aggrieved by the same, the present Criminal Appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the appellant has been falsely implicated in this case and that the prosecution has miserably failed to prove the charges against him beyond reasonable doubt. The case was registered only for statistical purpose and lacks substantive evidence. He further submitted that though the independent witnesses were very much available at the time of alleged search, the respondent failed to examine any of them to corroborate the procedures undertaken. Further, there are material contradictions regarding the place of occurrence as deposed by the prosecution witnesses. That apart, the appellant was not served with an arrest memo and his arrest was not informed to any relative. Therefore, the prosecution miserably failed to prove the charges as against the appellant and the conviction is liable to be set aside.

5. The learned Additional Public Prosecutor submitted that though the appellant was served with the arrest memo and due intimation



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regarding his arrest was given to his relatives, both the documents were not marked during the trial. The non-marking of those documents would not affect the case of the prosecution, since the appellant was found in possession of 22 kilograms of Ganja, which constitutes a commercial quantity under the provisions of the NDPS Act. The recovery was effected in accordance with law and the procedural formalities were duly followed. Therefore, the prosecution clearly proved the charges beyond reasonable doubt and the Trial Court rightly convicted the appellant herein. Hence, the conviction and sentence does not warrant any interference by this Court.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. A perusal of the records reveals that after receiving a secret information, P.W.1 duly intimated the same to his superior officer. Thereafter, he obtained permission and proceeded to the scene of occurrence along with his team. As per the secret information received, P.W.1 found the appellant. Subsequently, the appellant was served with search memo, which was marked as EX.P2. Thereafter, a search was



conducted by P.W.1 and his team. On the search, the respondent found the appellant in possession of 2 bags, each containing 11 kilograms of Ganja. After taking the required samples, P.W.1 prepared a statement as contemplated under Section 57 of the NDPS Act. After the arrest, an FIR was registered by the Investigating Officer. However, the arrest memo and the arrest intimation was not served to the appellant and also to the family members of the appellant herein.

8. During the course of appeal, the learned Additional Public Prosecutor produced the arrest memo as well as the arrest intimation. Though both documents appear to have been prepared and bear the signature of the appellant, there is no material to show that any intimation was given to the appellant's relatives or that such compliance was demonstrated before the Trial Court. Consequently, both documents were not marked during trial. That apart, P.W.1, after receiving the secret information, had obtained permission from the Deputy Superintendent of Police, being a superior officer, to proceed with the crime. After completion of the search and seizure, he also prepared a report under Section 57 of NDPS Act, which was marked as Ex.P5.



9. A perusal of the records reveals that the report under

Section 57 of the NDPS Act was prepared and marked by P.W.1 himself.

The same Inspector of Police who conducted the search also prepared the report and served it upon himself. Based on the said report, he himself registered an FIR in Crime No.17 of 2020. Further, though there was several general public were very much available in the scene of crime, the respondent failed to secure their presence as independent witnesses, even for the search and recovery process. Therefore, the case of the prosecution is not believable one.

10. Considering the above facts and circumstances of the case, including the procedural lapses and absence of independent corroboration, this Court is not inclined to interfere with the conviction, as the possession of the contraband was proved. However, this Court is inclined to modify the sentence alone. Accordingly, the conviction imposed on the appellant under Section 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substance Act, 1985 is hereby confirmed and the sentence is modified to the period of imprisonment already undergone by the appellant.



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11. In the result, this Criminal Appeal stands partly allowed.

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Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To

1.The Additional District Judge & Presiding Officer,
Special Court under EC Act/NDPS Act, Coimbatore

2.The Inspector of Police,
NBCID, Coimbatore.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

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