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Crl.A.No.1273 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1273 of 2023

Shamsiyya Mohammed ... Appellant/A2

vs.

The Union Rep. by
The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai – 77. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the entire pertaining to the file of the C.C.No.141 of 2019 on II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai and set aside the judgment dated 05.09.2023 and acquit the appellant/2nd accused from the charges against her.

For Appellant : Mr.P.G.Perumal Pandian

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor.



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JUDGMENT

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This Criminal Appeal has been filed by A2 challenging the conviction and sentence imposed upon her vide judgment dated 05.09.2023 in C.C.No.141 of 2019, on the file of the learned II Additional Special Judge (FAC), II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai.

2(i) It is the case of the prosecution that when PW1 the intelligence officer attached to the respondent was in his office on 13.07.2019 at about 21.30 hours, he received a secret information that two Maldivan nationals viz., the appellant/A2 and one Abdulla Aalim/A1 were indulging in smuggling of Hasish Oil; that they were carrying 1 Kg of Hasish Oil concealed in Shampoo bottles to Maldives; that they were leaving for Maldives in Srilankan Airlines flight UL 122 departing from Chennai on 14.07.2019 at about 10.00 a.m; that PW1 reduced the said information into writing marked as Ex.P1 and submitted the same to PW2; that PW1 along with the other member of the police party reached the Airport and intercepted the appellant/A2 and A1; that they found that two of them were



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proceeding to Maldives in the Srilankan Airlines; that PW1 explained the right under Section 50 of the NDPS Act, to the appellant/A2 and A1 and on the consent given by the accused, a search was conducted and the respondent found shampoo bottles in the suitcase of the appellant and inside the shampoo bottles, they found a silver coloured foil containing thick concentrated oil; that after test they found that the oil was Hasish Oil; that the appellant/A2 and A1 were in possession of 970 gms of Hasish Oil and after complying with the other formalities, registered the FIR and on investigation a final report was filed against the appellant/A1 and A2 for the offences under Sections 8(c) r/w 29(1), 8(c) r/w 20(b)(ii)(B), 8(c) r/w 28 and 8(c) r/w 23 (b) of the NDPS Act, before the learned Principal Special Judge, NDPS Court, Chennai and was taken on file as C.C.No.141 of 2019.

(ii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was made over to the learned II Additional Special Judge (FAC), II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, for trial. The trial Court framed charges for the offences under Sections 8(c) r/w 29(1), 8(c) r/w 20(b)(ii)(B),



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8(c) r/w 28 and 8(c) r/w 23 (b) of the NDPS Act against the accused, and when questioned, the accused pleaded 'not guilty'.

(iii) To prove the case, the prosecution examined 6 witnesses as P.W.1 to P.W.6, marked 59 documents as Exs.P1 to P59 and marked 8 material objects as M.O.1 to M.O.8. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. On the side of defence, no oral or documentary evidence was let in.

(iv) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/A2 guilty of offences under Sections 8(c) r/w 20(b)(ii) (B) and 8(c) r/w 28 of NDPS Act and sentenced her as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
8(c) r/w 20(b)(ii) (B) of NDPS Act	To undergo rigorous imprisonment for eight years and to pay a fine of Rs.80,000/-, in default to undergo rigorous imprisonment for six months.
8(c) r/w 28 of NDPS	To undergo rigorous imprisonment for eight years and to pay a fine of Rs.80,000/-, in default to undergo rigorous



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<i>Offence under Section</i>	<i>Sentence imposed</i>
Act	imprisonment for six months.
The sentences were ordered to run concurrently.	

The trial Court found A2 not guilty of the offence under Sections 8(c) r/w 29(1) and 8(c) r/w 23(b) of the NDPS Act and acquitted her of the said offence. Challenging the above conviction and sentence, A2 has filed the instant appeal.

3. Heard, Mr.P.G.Perumal Pandian, learned counsel appearing for the appellant/A2, and Mr.N.P.Kumar, learned Special Public Prosecutor, appearing for the respondent.

4. Mr.P.G.Perumal Pandian, the learned counsel appearing for the appellant would submit that ever since the date of arrest i.e., 14.07.2019, the appellant is in custody; that the respondent had violated Section 50(4) of the NDPS Act, as there was no lady officer present during search; that the trial Court had ignored the material contradictions in the evidence of the witnesses examined on the side of the prosecution; that in any case, considering the fact that the appellant is a lady and has undergone more



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than 5 ½ years sentence, the sentence may be reduced.

5. Learned Special Public Prosecutor *per contra* submitted that the offence committed by the appellant is serious in nature and hence, the conviction and sentence imposed on the appellant is in accordance with law; that the minor contradictions pointed out by the appellant have been considered by the trial Court elaborately and the trial Court found that such contradictions would not discredit the testimony of the witnesses and hence prayed for dismissal of the appeal.

6. I have carefully considered the rival submissions and perused all the relevant materials available on record.

7. As stated earlier, the prosecution had examined six witnesses. PW1 is the person who had recorded the secret information and was part of the police party, which conducted search and thereafter seized the contraband from the appellant. PW2 was working as Superintendent of the respondent police and on information given by PW1, had granted



permission to PW1 to take necessary action. The report submitted by PW1 under Section 57 of the Act to PW2 was marked as Ex.P32. PW3 was the Assistant Chemical Examiner at Customs House, who received the sample and found on analysis that the sample was Hasish Oil. The report filed by PW3 is Ex.P41. PW4 was the General Manager at Pearl International in Periamet and had deposed that the appellant and A1 stayed in the hotel from 05.07.2019 to 14.07.2019. He had also identified both the appellant/A2 and A1 and had also produced the bill copy along with the photo ID proof submitted by A1 and A2. PW5 was working in the Srilankan Airlines and was witness to the search and seizure by PW1. PW6 is the intelligence officer attached to the respondent who conducted the investigation and filed the final report.

8. It is seen from the evidence of PW1 that on receiving the secret information, he had gone to the Airport and verified the boarding passes of the appellant/A2 and A1 and their passports which were marked as Ex.P6 & Ex.P7 respectively; that he had asked the Airlines staff to bring the bags of the appellant which were already checked in for detailed examination and



on search after complying with Section 50 of the NDPS found shampoo bottle, which in turn contained silver coloured foil in which there was a brown colour thick concentrated oil and when tested by NDPS kit, it was found to be Hasish Oil. The evidence of PW1 has been corroborated by PW2, the officer, who granted permission to PW1 and by PW5, the Airlines staff. Nothing has been elicited in the cross examination to discredit their testimony.

9. It is seen further from the evidence of PW1 that the appellant/A2 was apprised of her right under Section 50 of the NDPS Act and she had given consent for search to be conducted by PW1. That apart, it is also seen that one Mrs.Pramila, a lady officer was also present during the Mahazar proceedings and therefore there is no violation of Section 50(4) of the NDPS Act. The other alleged infirmities viz., that Section 52A of the NDPS Act was also not complied with, is also without any basis.

10. This Court on re-appreciation of the evidence is of the view that there is nothing to either discredit the testimony of the witnesses or to hold



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that there is violation of the mandatory provisions. Therefore, this Court sees no reason to interfere with the finding of guilt rendered by the trial Court for convicting the appellant/A2 for the offences under Sections 8(c) r/w 20(b)(ii) (B) and 8(c) r/w 28 of NDPS Act.

11. However, considering the fact that the appellant/A2 is a lady and has served about 5 years and 6 months and that there are no previous cases against the appellant, this Court is of the view that it would sub serve the interest of justice, if the appellant is sentenced to the period already undergone for both the aforesaid offences and also to reduce the default sentence for non payment of fine to three months for both the offences, instead of six months. Accordingly, it is ordered as follows:

(i) The conviction of the appellant/A2 in C.C.No.141 of 2019 by the II Additional Special Judge (FAC), II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, vide judgment dated 05.09.2023 for the offences under Sections 8(c) r/w 20(b)(ii) (B) and 8(c) r/w 28 of NDPS Act, are confirmed, however, the sentence imposed on the appellant/A2 by



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the trial Court is reduced to the period already undergone for both the aforesaid offences;

(ii) The fine imposed by the trial Court for both the offences are confirmed, however the default sentence for non payment of fine i.e. rigorous imprisonment for six months is reduced to rigorous imprisonment for three months for both the offences; and

(iii) If the appellant pays the fine amount of Rs.80,000/- each for the aforesaid offences, she shall be set at liberty forthwith, unless her presence is required in connection with any other case. But, if she fails to pay the fine amount, the default sentence shall commence from today and the default sentence for both the sentences shall run concurrently.

12. With the above modification, the Criminal Appeal is partly allowed.

02.01.2025



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Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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Copy to:

- 1.The II Additional Special Judge (FAC),
II Additional Special Court for Exclusive Trial of cases under NDPS Act,
Chennai.
- 2.The Intelligence Officer,
Narcotics Control Bureau, Chennai Zonal Unit,
Chennai – 77.
3. The Superintendent of Prisons,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN,J.

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