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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	17.12.2024
Pronounced On	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.308 of 2022

Solaiyappan

... Appellant

Vs.

The Intelligence Officer,
Narcotics Control Bureau,
Madurai
NCB F.No.48/1/03/2019/NCB-MDU

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.119 of 2019 relating to the judgment dated 12.01.2022 passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act, Cases, Pudukkottai and set aside the judgment of conviction on the appellant/accused.



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For appellant : Mr.R.Pon Karthikeyan

For respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor

JUDGMENT

Sole accused in C.C.No.119 of 2019 on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act cases, Pudukkottai, has filed this Criminal Appeal before this Court challenging the conviction and sentence imposed upon him by the impugned judgment dated 12.01.2022. The conviction and sentence is as follows:

<i>Conviction for the Offence under Section</i>	<i>Sentence of Imprisonment</i>
8(c) r/w 21(c) of the NDPS Act	10 years R.I and to pay a fine of Rs.1,00,000/- in default to undergo 6 months R.I
8(c) r/w 23(c) r/w 28 of the NDPS Act	10 years R.I and to pay a fine of Rs.1,00,000/- in default to undergo 6 months R.I



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2. According to the prosecution, on 24.04.2019 at about 13.00 hours, P.W.1 received the secret information that the accused was about to travel to Malaysia by Airflight Scheduled to fly at 23.25 hours and he was carrying substantial quantity of cough syrup containing narcotic Drugs. The said information was reduced in writing and informed to his superior and obtained permission and went to Trichy Airport along with his team. The team mounted surveillance near X ray scanner in the check-in area at Trichy Airport. While, P.W.1 was verifying the passport of the passenger, whose luggage was going through the scanner, he identified the accused through his passport and found some suspicious item in his bag. On enquiry, the accused disclosed his name and address and handed over his passport along with Air Ticket. On verification, it was found that two more passengers were travelling with him, namely, Uma and Prakash. They introduced themselves as wife and son of the appellant. Thereafter, P.W.1 made a search in his bag and found 95 bottles of Eskup cough Syrup containing Codeine Phosphate, a manufactured Narcotic Drug under the NDPS Act. P.W.1 recovered the same and took the sample following the procedure as stated in the NDPS Act. The accused



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voluntarily handed over his belongings in his possession like Aadhar Card, Driving Licence, Pan Card, Bank ATM Cards, one Smart Phone with Sim Card, Indian Currency and European Currency. Thereafter, he arrested the accused and produced him at the NCB Office and registered the case and produced the accused along with the contraband before the learned Judicial Magistrate and the investigation was continued by the investigating officer and he filed the complaint under Section 8(c) r/w 21(c), 23, 28 and 29 of the NDPA Act, 1985 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.119 of 2019.

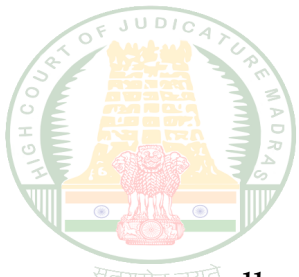
4. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned Trial Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellant, framed charges under Sections 8(c) r/w 21(c), 23, 28 and 29 of the NDPS Act 1985 and the same were read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood



5.The prosecution, in order to prove its case, had examined 5 witnesses as P.W.1 to P.W.5 and exhibited 35 documents as Ex.P.1 to Ex.P.35 and marked ten material objects as M.O.1 to M.O.10.

6.When the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to the 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.

7.The learned Trial Judge, considering the materials and circumstances found that the accused in C.C.No.119 of 2019 was guilty and convicted him for the offences punishable under Section 8(c) r/w 21(c) of the NDPS Act 1985 and Section 8(c) r/w 23(c) r/w 28 of the NDPS Act, 1985 and acquitted the appellant for the offence under Section 8(c) r/w 29 r/w 23(c) of the NDPS Act, 1985. Challenging the same, the



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appellant has filed the present appeal before this Court.

8.The learned counsel for the appellant would submit that according to the prosecution, 95 bottles were recovered in two bags. One bag contained 5 loose bottles and another bag contained 9 pockets and each pockets contained 10 bottles, totally 95 bottles were recovered and samples were taken only from 5 bottles and no sample was taken in the remaining bottles. Without taking the sample from each bottle, they treated the case as commercial quantity and considering the age of the appellant and his health condition, he pleaded this Court to modify the conviction. The learned counsel would further submit that there was illegal custody for two days from 24.04.2019 to 26.04.2019 and also there was no explanation for the said delay. Due to the illegal custody, there is every chance for introducing false materials. The recovery was made in the Airport in the presence of the translator one Mr.Ganesh, and he was not examined. Therefore, the non examination of the translator vitiated the recovery. There was contradictory evidence relating to the bag. According to his version “ஜிப் இல்லாத 2 பைகளில்” recovered. But the



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evidence is that the appellant opened the zip. Therefore, this material contradiction coupled with the illegal custody of two days creates a doubt over the prosecution case. The bag was not recovered. In Ex.P19, there is a mention about one person by name Segu Buhari, Even though he accompanied the appellant he was not implicated in this case. Therefore, there is a doubt over the prosecution case. The origin and destination of the contraband was not proved and he also placed reliance on the judgment in the case of *Mohidersingh vs, State of Punjab* reported in 2017 AIR 689 where the Hon'ble Supreme Court observed that the investigation must be relating to the origin and destination of the contraband, otherwise, said lapse amounts to defective investigation and also the same is a ground for acquittal. He would also submit that no other incriminating material was recovered from the house search of the appellant. Therefore, he pleaded that there was no conscious possession of the contraband.

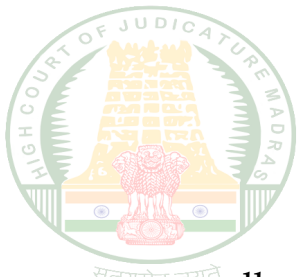


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9. Thiru.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor appearing for the respondent would submit that there was no doubt over the recovery with regard to Ex.P19 and about the mentioning of one Segu Buhari, it was a mistake and the same was explained by P.W.1, P.W.3 and P.W.5. The non examination of the Airport authorities is not fatal when the evidence of P.W.1 to P.W.3 are cogent and trustworthy. Totally 9 ½ liters was seized and 100 grams was taken as a sample and therefore, there is no necessity to take sample in each bottle. Therefore, he seeks to dismiss the appeal.

10.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

11.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?
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12.P.W.1 is the Intelligence Officer, NCB, Madurai, and he received the information on 24.04.2019 at about 13.00 hours about the illegal transportation of Eskuf Cough Syrup from India to Malaysia by Malindo Airflight Scheduled to fly at 23.25 hours and reduced the same in writing and submitted to his superior P.W.3. Thereafter, he went to the Airport and intercepted the appellant in the presence of Airport Officers, namely, P.W.2 and recovered his bag. In the said bag, they recovered 5 bundles of Eskuf Cough Syrup and in each bundle there were 10 bottles of Eskuf Syrup. They recovered the said bottles in the presence of P.W.2. P.W.2 clearly deposed about the same. During the recovery proceedings the help of one translator was used. The appellant showed the bag and in the said bag, 95 bottles of the Eskuf Cough Syrup was found. In Ex.P.19, it is specifically referred that one Segu Buhari handed over the bag, but he was not arrayed as accused. In respect of that, they gave an explanation that the same was mistake. This Court is unable to accept the said explanation when the document clearly states that the contraband was



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received from one Segu Buhari and the same was also admitted and explained during the course of cross examination. This Court has some doubt about the recovery from the appellant. Even the charge is only against the appellant that he has conspired with one Rajagopalan and Satheeshwaran and the trial Court acquitted the appellant from the charge of conspiracy. Even the remaining contraband was recovered from the “ஜிப் இல்லாத 2 பைகளில்”. In this aspect also there is a material contradiction. According to the evidence, the appellant opened the zip. Futher, there was a illegal detention from 24.04.2019 at 11.25 hours to 26.04.2019. Even though they caught the appellant on 24.04.2019, there is no explanation relating to serving at arrrest memo on 28.01.2019 at 04.30 pm. Though it is not a material circumstance, but, in view of the specific averment in Ex.P19 that the contraband was handed over by Segu Buhari and also the material contradiction relating to the zip and absence of drawing samples from each bottles, all create reasonable doubt over the prosecution case. When Ex.P19 clearly states that the recovered articles were handed over by Segu Buhari and the non-examination of the translator who translated the version of the appellant also creates doubt



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over the prosecution case. That apart, the origin and destination of the contraband also is not proved, which is material in this case.

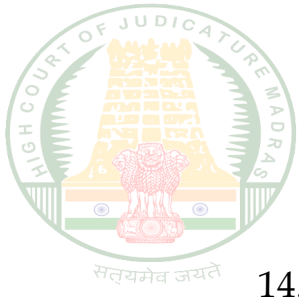
13. Therefore, this Court finds that the prosecution has not clearly proved the charge against the appellant and this Court is inclined to acquit the appellant from all the charges framed against him.

14. In the result, this Criminal Appeal stands allowed in the following terms:

14.1. The conviction under Section 8(c) r/w 21(c) and under Section 8(c) r/w 23(c) r/w 28 of NDPS Act, 1985 passed by the learned Additional District and Sessions Judge for NDPS Act cases, Pudukkottai, dated 12.01.2022, in C.C.No.119 of 2019, is hereby set aside.

14.2. The appellant is acquitted from all the charges in C.C.No.119 of 2019, vide judgment dated 12.01.2022 passed by the learned Additional District and Sessions Judge for NDPS Act cases, Pudukkottai.

14.3. Fine amount, if any, paid by the appellant shall be refunded to the appellant forthwith.



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14.4. Bail bond executed by the appellant shall stand cancelled.

Consequently, connected miscellaneous petition is closed.

15.05.2025

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

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To

1. The Special Court for EC and NDPS Act cases,
Pudukkottai.
2. The Intelligence Officer,
Narcotics Control Bureau,
Madurai.
3. The Special 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.

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