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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.11.2024

Pronounced on : 07.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.764 of 2023
and
CrI.MP(MD)No.12298 of 2023

Tamilan @ Tamilselvan

... Petitioner/Appellant

Vs.

The Inspector of Police,
Rayappanpatti Police Station,
Theni District.
(In Crime No.229 of 2015)

... Respondent/Respondent

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the records and allow the appeal and acquit the appellant from all the charges by setting aside the impugned judgment passed by the learned Principal Special Court for NDPS Act Cases, Madurai, in C.C.No. 234 of 2015 dated 21.07.2023.

For appellant : Mr.J.Selvam

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



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JUDGMENT

The accused in C.C.No.234 of 2015 on the file of the Principal 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 21.07.2023. 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	2 years R.I and to pay a fine of Rs. 10,000/- in default to undergo 6 months S.I

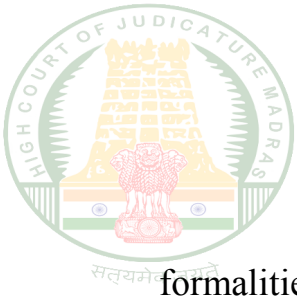
2. The case of the prosecution in brief :-

When P.W.3 was working as Sub-Inspector of Police, Rayappanpatti Police Station, Theni District, on 01.08.2015, at 05.15 pm, he received a secret information from his informant about the appellant's illegal possession and transportation of 10 kg of ganja near Karuppasamy Kovil, Kammaikarai, Anaimalaiyanpatti. He recorded the said information in the General Diary and reduced it in writing and informed the same to his Immediate Superior and got permission. Thereafter, P.W.3 & P.W.1 went to the spot with necessary equipment along with the informant were on surveillance. At that time, the appellant



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was seen carrying a yellow colour plastic bag. The informant identified the appellant. P.W.3 and P.W.1 intercepted the appellant and introduced themselves as police officers and he was informed about his right to be searched before the Judicial Magistrate or the Gazetted officer as required under Section 50 of the NDPS Act. The appellant consented to conduct search by the officer himself and hence, P.W.3 conducted search in the plastic bag, which was carried by the appellant in the presence of P.W.1 and other police officers. He found possession of ganja in the said bag and weighted the contraband and took the samples of S1 to S2 from the said bag and properly sealed them. He also properly sealed the remaining contraband. Thereafter, he arrested the appellant. The appellant also gave a confession and the same was recorded by P.W.3. P.W.3 brought the accused to the police station along with the entire contraband and sample and registered a case in Crime No.229 of 2015 for the offence under Sections 8(C) r/w 20(b)(ii)(B) of NDPS Act and prepared a detailed report under Section 57 of NDPS Act. Following the same, P.W.3 entrusted the custody of the accused to P.W.4 along with the contraband, sample and report under Section 57 of the Act. The Inspector of Police produced the accused before the learned Judicial Magistrate, along with the recovered contraband and samples taken from the said contraband and requested to remand him on 15.09.2015. After completing all the



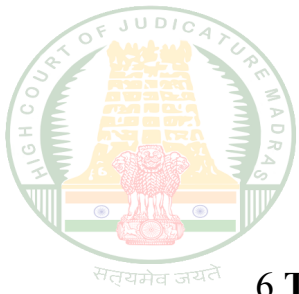
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formalities, the learned Judicial Magistrate remanded the appellant in judicial custody. Thereafter, P.W.4 conducted investigation and filed the final report before the Principal Special Court for NDPS Act Cases, Madurai, and the same was taken on file in C.C.No.234 of 2015.

3.The prosecution, in order to prove its case, had examined 4 witnesses as P.W.1 to P.W.4 and exhibited 10 documents as Ex.P.1 to Ex.P.10 and marked two material objects as M.O.1 & M.O.2.

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

5.The learned Trial Judge, considering the materials and circumstances found that accused in C.C.No.234 of 2015 was guilty and passed the conviction and sentence against the appellant as stated above.



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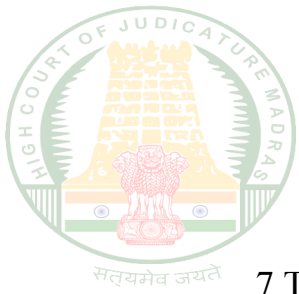
6.The learned counsel for the appellant made the following submissions:-

6.1. There was enormous delay i.e., 45 days in producing the contraband before the Court below and the same was not properly explained and hence, there is a doubt over the recovery of the contraband.

6.2. Non examination of the independent witnesses is an additional circumstance which casts doubt over the recovery of the contraband as alleged by the prosecution.

6.3. He further submitted that there is no compliance of Sections 42 of NDPS Act, in letter and spirit. Therefore, the conviction and sentence passed against the appellant is to be set aside.

6.4. There was no compliance of Section 57 of the NDPS Act. Hence, he seeks to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.



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7.The learned Additional Public Prosecutor would submit that the prosecution clearly proved the recovery of contraband through the evidence of P.W.3 and P.W.1 and compliance of statutory provisions through the prosecution documents Ex.P.1 to Ex.P.10. Further, P.W.3, P.W.1 and P.W.4 clearly deposed about the compliance of Sections 42 and 57 of the NDPS Act. Therefore, he seeks to confirm the sentence imposed by the learned trial Judge without any reduction.

8.This Court considered the 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 and the precedents relied upon by them.

9.The question arising for consideration in this case is *whether the prosecution has established the case beyond reasonable doubt against the appellant and the conviction and sentence imposed by the learned trial Judge against the appellant can be sustained or not?*



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10. Discussion on Recovery:-

P.W.3 deposed that on 01.08.2015, at 05.15 pm, when he was working as Sub-Inspector of Police, Rayappanpatti Police Station, Theni District, he received a secret information from his informant about the appellant's illegal possession and transportation of 10 kg of ganja near Karuppasamy Kovil, Kammaikarai, Anaimalaiyanpatti. He recorded the said information in the General Diary and reduced it in writing and informed the same to his Immediate Superior namely, P.W.4. P.W.4 directed to take action. The informant identified the appellant to P.W.3 and his team and left the place. P.W.3 and his team intercepted the appellant who was carrying the yellow colour plastic bag and made search by following all procedures stated in the Act. At that time, the appellant was found in possession of 10 kg of ganja. Thereafter, by following the procedure, he recovered the contraband from the yellow colour plastic bag and arrested the appellant. The said evidence of P.W.3 corroborated with the evidence of P.W.1. Both were subjected to cross examination and nothing was elicited to disbelieve their version. Further, in the evidence of P.W.3 and P.W.1, there are no material contradictions or discrepancies between their version relating to the recovery of the contraband. Their evidence are cogent and trust worthy. No



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material was elicited to disbelieve their version or for filing false case. Therefore, the recovery was proved in accordance with law.

11. Compliance of 57 of the Act:-

Around 07.00 to 07.15 p.m, P.W.3, recovered the contraband from the yellow colour plastic bag, which was carried by the appellant and and took samples and properly sealed the remaining contraband and arrested the accused and brought the accused to the police station and registered a case and prepared the report under Section 57 of the Act and submitted the report to the P.W.4 and the same was received by P.W.4 at 08.30 hours on 01.08.2015 itself. P.W.4 also deposed that he received the said report and submitted to the Court along with the remand report. P.W.4 was cross examined and nothing was elicited to disbelieve his version about the receipt of the report under Section 57 of the Act. This Court also perused Ex.P.9. It show that the report was received by P.W.4 at 08.30 p.m. Therefore, the contention of the learned counsel for the appellant that there was no compliance of Section 57 of the Act deserves to be rejected.



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12. Delay in producing the contraband:-

The contraband was recovered around 07.00 to 07.15 pm on 01.08.2015.

At the time of remand itself, without any delay on 01.08.2015 at 11.20 pm the samples and the contraband were produced along with the accused. Hence, there was no delay in producing the entire contraband. The Chemical Analyst speaks about the presence of *cannabis* in the samples produced before her and the report was also marked as Ex.P.5. In the said report, there was no tampering of the seal. Delay in producing the contraband before the Special Court is not a material lapse, to acquit the appellant, when the entire contraband was produced before the learned Judicial Magistrate at the time of the remand itself and the same was duly verified by the learned Judicial Magistrate. Further, the said contraband was marked as material object before the trial Court without objection and hence, the contention of the learned counsel for the appellant cannot be accepted.

13.1. Non-examination of the Independent witnesses:-

The Hon'ble Constitution Bench of the Supreme Court in *Mukesh Singh Vs. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120 reiterated the principle that the non-examination of the independent witnesses is not a circumstance to disbelieve the evidence regarding recovery, when the other



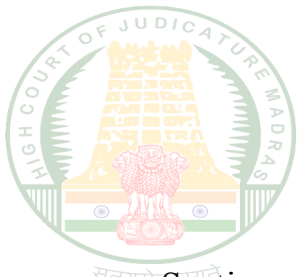
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evidence are cogent and trust worthy. In this case, the learned trial Judge has considered the entire evidence to hold that the recovery from the appellant was proved in accordance with law.

14. Therefore, in all aspects, the prosecution clearly proved the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. This Court finds no merit in the contention of the learned counsel for the appellant to disbelieve their version. Hence, the conviction and sentence imposed by the learned trial Judge is hereby confirmed.

15. However, considering the age of the appellant and also considering the fact that he is suffering from various old age related ailments, this Court is inclined to reduce the sentence from 2 year Rigorous Imprisonment to the sentence period **already undergone** by him for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act.

16. In view of the above, though the conviction passed by the trial Court for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is hereby confirmed, sentence of 2 year Rigorous Imprisonment for the offence under



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Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, is reduced to the period, which was **already undergone** by the appellant. Fine amount with default sentence is hereby confirmed.

17. With the above modification, the Criminal Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed.

07.04.2025

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

- 1.The Principal Special Court for NDPS Act Cases,
Madurai.
2. The Inspector of Police,
Rayappanpatti Police Station, Theni 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, Madurai.



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K.K.RAMAKRISHNAN.J,

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