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Crl A No.564 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2026

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.564 of 2023

Arunkumar

... Appellant

Vs

The State Rep. By,
The Inspector of Police,
NIB-CID, Villupuram District.
(Crime No.36 of 2021)

... Respondent

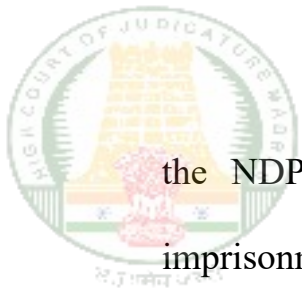
Prayer : This Criminal Appeal has been filed u/s.374(2) of the Code of Criminal Procedure, praying to set aside the conviction and sentence passed by the learned Special Court for trial of Narcotic Drugs and Psychotropic Substance Act Case, Villupuram in Spl.C.No.24 of 2021 judgment dated 27.04.2023 and acquit the appellant herein from the charges.

For Appellant : Mr.K.Karthik

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

The appellant has preferred the above appeal challenging the judgment passed by the Special Court for trial of Narcotic Drugs and Psychotropic Substance Act case, Villupuram, in Spl.S.C.No.24 of 2021 dated 27.04.2023 convicting the appellant for the offence under Section 8(c) r/w 20(b)(ii)(B) of



the NDPS Act, 1985, and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months.

2. It is the case of the prosecution that a secret information was received by P.W.1 on 18.09.2021, at about 5.00 p.m. that the appellant was selling ganja; that P.W.1 had made entries in the general diary and had informed his superior under Section 42(2) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'); that after obtaining his permission he went along with P.W.2 and P.W.3 to the place of occurrence along with the informant ; that when the appellant was identified by the informant, P.W.1 and his team went to the appellant and introduced themselves and appraised the appellant of his right under Section 50 of the Act to be searched by a Gazetted Officer; that thereafter no contraband was found in possession with the appellant; that the appellant voluntarily gave a confession stating that he would point out to the place where the ganja was hidden; that when the P.W.1 and his team went to the place they found the parcel which was sealed with a brown colour cello tape; that when they opened the parcel, they found 1.250 Kgs. of ganja ; that thereafter, the appellant had given a confession at 19.40 hours and he was arrested at 20:15 hours ; and that thereafter the FIR (Ex.P.6) was registered in Crime No.36 of 2021 for the offences under Section 8(c) r/w 20(b)(ii)(B) of the Act. P.W.9 conducted the investigation and filed the final report against the appellant.



3. On appreciation of oral and documentary evidence, the Trial Court found that the prosecution had established the case beyond reasonable doubt, and held the accused guilty of the offence under Section 8(c) r/w. 20(b)(ii)(B) of the Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. The trial Court framed the charge under Section 8(c) r/w 20(b)(ii)(B) of the Act. The prosecution had examined nine witnesses to prove its case and marked Exs.P1 to P.19. The trial Court after considering the evidence, convicted the appellant and sentenced him as stated above.

5. Mr.K.Karthik, the learned counsel for the appellant would submit that no contraband was seized from the appellant; that the seizure mahazar witnesses turned hostile; that P.W.1 had admitted in his cross examination that, after the contraband was seized, the confession of the appellant was recorded and thereafter he was arrested and therefore, the seizure cannot be pursuant to the discovery of the fact under Section 27 of the Evidence Act and prayed for acquittal.



6. The learned Additional Public Prosecutor appearing for the respondent / complainant would submit that the prosecution had established the case beyond reasonable doubt; that the evidence of Police officers cannot be disbelieved merely because the seizure mahazar witnesses turned hostile and that the mandatory provisions have been complied with and therefore the impugned judgment is justified.

7. As stated above the prosecution examined nine witnesses. P.W.1 is the Inspector of Police, who received the secret information and arrived at the spot with his team, who had allegedly seized the contraband from the appellant. P.W.2 and P.W.3 had accompanied P.W.1 for the said purpose. P.W.4 is the Forensic Science Expert, who had analysed the sample and issued the certificate Ex.P.11 stating that the sample contained ganja. P.W.5 is the witness to the observation mahazar and rough sketch. He did not support the prosecution case. P.W.6, is the confession and the seizure mahazar witness. He had deposed that he did not know the contents of the documents in which he had signed and he did not know the accused. Therefore, he was treated hostile to the prosecution. Similarly, P.W.7, who is the other witness to the observation mahazar and rough sketch also turned hostile. P.W.8 is the witness to the seizure mahazar whose deposition is also similar to that of P.W.6 and therefore he was treated hostile. P.W.9 is the Investigating Officer.



8. Thus, it is seen that all the independent witnesses examined by the prosecution to prove the observation mahazar, rough sketch, the confession of the accused and the seizure have turned hostile. The prosecution case, therefore, rests on the evidence of P.W.1 to P.W.3 and that of the Investigating Officer, P.W.9. Admittedly, no contraband was seized from the possession of the appellant. The contraband was seized from a public place in a vacant land.

9. It is the version of P.W.1 that it was the accused who pointed out to the place where the contraband was hidden. However, the said statement is inadmissible as it is not pursuant to the information of the accused which led to a discovery of the fact. P.W.1, in his cross examination could admit that the contraband was first seized, thereafter, the confession of the appellant was recorded and thereafter he was arrested. The above admission of P.W.1, would make it clear that the recovery was not pursuant to the confession of the accused as claimed by the prosecution. Therefore, in the facts and circumstances of the case, since the independent witness have turned hostile and in the light of the above admission by P.W.1, the seizure cannot be attributed to the appellant and therefore, this Court is of the view that the appellant cannot be convicted for possession of the contraband. P.W.1, would further admit that no investigation has been conducted to ascertain as to who purchased the contraband from the appellant. Therefore, for the above said reasons, this Court is of the view that the impugned judgement cannot be sustained. Accordingly, the appellant is



acquitted of all the charges.

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10. Accordingly, the judgment of conviction passed by the learned XVII Additional Sessions Judge, Special Court for trial of Narcotic Drugs and Psychotropic Substance Act Case, Villupuram, in Spl.S.C.No.24 of 2021 dated 27.04.2023 is hereby set aside. The Criminal Appeal is allowed and the appellant is acquitted of the offence under Section 8(c) r/w 20(b)(ii)(B) of the Act. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

04.02.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Special Court for trial of Narcotic Drugs and Psychotropic Substance Act Case, Villupuram
2. The Inspector of Police, NIB-CID, Villupuram District.
3. The Public Prosecutor, High Court, Madras.



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SUNDER MOHAN, J.

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