

M.Veludurai Vs. the State Represented Byo.R.No.1 of 200

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Court : Chennai

Decided On : Jun-17-2013

Judge : A.Arumughaswamy

Appellant : M.Veludurai

Respondent : The State Represented Byo.R.No.1 of 200

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

17. 06/2013 CORAM THE HONOURABLE MR.JUSTICE A.ARUMUGHASWAMY
Crl.A.(MD) No.256 of 2009 M.Veludurai ... Appellant/Accused Vs The State
represented by The Superintendent of Customs, Special Narcotic Cell, Nagercoil.
O.R.No.1 of 2001. .. Respondent/complainant PRAYER Criminal Appeal is filed
under Section 374 of the Criminal Procedure Code, against the judgment dated
28.04.2009 in C.C.No.1627 of 2001 passed by the learned Special District and
Sessions Judge for E.C.Act and N.D.P.S. Act cases, Madurai. !For petitioner ..
Ms.V.Jeyarani ^For Respondents .. Mr.K.S.Duraipandian Additional Public
Prosecutor. :

JUDGMENT

The sole accused in C.C.No.1627 of 2001, on the file of the learned Special District and Sessions Judge for E.C.Act and N.D.P.S.Act cases, Madurai, is the appellant and he was charged for the commission of the offence under Section

8(c) read with Section 29 and Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act) and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.1,00,000/-(Rupees one Lakh only) with a default sentence of three months simple imprisonment for each offence vide judgment dated 28.04.2009 and challenging the same, present appeal is filed.

2. The facts of the case which are necessary to dispose this appeal are as follows: P.W.1 at the relevant point of time, was the Superintendent of Narcotics Control Bureau at Nagercoil and he received information through the informant at about 03.00 p.m. at 07.01.2001 and the same was reduced into writing. P.W.1 got the signature of the informant and thereafter, informed him that he will meet him at about 06.00 p.m. at Valliyoor. P.W.1 contacted the Assistant Commissioner over telephone and requested him to depute two Inspectors along with him to Valliyoor. P.W.1 also prepared the report in this regard.

3. As per the orders of the Assistant Commissioner, P.W.2 and P.W.6, the Inspectors came to the office of P.W.1 at Nagercoil and thereafter, all of them proceeded to Valliyoor and were waiting near Venus lodge. At about 06.00 p.m. on 07.01.2001, one person was identified by the informant and he was surrounded and was enquired. The said person informed that his name is Veldurai and he came from Chennai and he is staying at the room No.204, Venus lodge and that he is the native of Alangulam.

4. P.W.1, P.W.2 and P.W.6 informed their identity to Veldurai and suspecting that he is keeping a narcotic substance in his room, wanted to search it. P.W.1 also requested the services of Tvl.Ponnusamy and John Bosco (not examined as witnesses) to be the witnesses to search and they also accepted. Thereafter, the party headed by P.W.1 proceeded to Venus lodge and after getting permission of Veldurai searched the room No.204. At the time of search, the polythene bag with a mixture of black and sandal colour was found beneath the bed with a marking ".L.K.S.Jewellers, Bose Road, Chennai". (both in English as well as in Tamil).

5. In the presence of the independent witnesses, the polythene bag was opened and was searched and two brown coloured kakki covers were found. The contents

of kakki covers were examined by using the Test kit and was found to be Heroin.

6. The party headed by P.W.1 asked Veldurai that he should be searched and also explained his right that the said search can be made in the presence of the Judicial Magistrate also. However, Veldurai replied that it is not necessary and the officials themselves can make search. The said two pockets found in the brown coloured polythene covers were given the number as B.1 and B.2 and from each pockets, 5 grams of powder (heroin) were taken and was given the number as B1S1, S2 and B2S1 and S2. The seized samples were separately put in separate covers. The covers were sealed and the signatures of the witnesses as well as Veldurai were obtained and the officials namely P.W.2 and P.w.6 had also subscribed their signatures.

7. On 08.01.2001, the accused namely Veldurai voluntarily came forward to give a statement in his own handwriting and it was marked as Ex.P.5. The details collected through Ex.P.5 were informed to the Assistant Commissioner of Narcotics Control Bureau, at Chennai by P.W.1 through wireless message and the copy of the same was marked as Ex.P.6.

8. Thereafter, the accused was informed of he offences committed by him and he was arrested on 08.01.2001 at about 10.00a.m. and the arrest memo was marked as Ex.P.7. P.W.1 lodged the complaint in this regard. The F.I.R. was marked as Ex.P.11. After investigation, P.W.1 filed the final report against the accused under Section 8(c) read with Section 21(c) of the N.D.P.S. Act.

9. The Special Court for E.C. Act and N.D.P.S. Act cases, Madurai took cognizance of the final report in C.C.NO.1627 of 2001 and framed the charges under Section 8(c) read with Section 29 and 8(c) read with Section 21 of the N.D.P.S.Act, against the accused.

10. The prosecution in order to establish their case, examined P.W.1 to P.W.6 and marked Exs.P.1 to P.18 and also marked M.O.1.

11. On behalf of the accused, no oral evidence was let in and no documents were marked.

12. The trial Court on an appreciation of oral and documentary evidence, found the accused guilty of the offences for which he was charged and convicted and sentenced him as stated above and hence, the present Criminal Appeal has been filed.

13. Heard the learned Counsel for the appellant/accused and the learned Special Public Prosecutor and perused the materials available on records.

14. Earlier, when this Court heard the appeal, the learned Counsel appearing for the accused submits that the accused has been charged under Section 21(c) of the N.D.P.S. Act for the possession of 1.370kgs of Heroin and it must be construed as small quantity, since the purity test of Heroin has not been conducted.

15. This Court has also agreed with the argument of the learned Counsel for the accused to some extent. Thereafter, the following question is framed for determination: ".Whether in the absence of exact quantity/percentage of narcotic drug/psychotropic substance found in the seized contraband, the punishment for contravention in relation to manufactured drugs and preparations, is to be imposed under Section 21(a) or under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985".

16. Thereafter, after getting the order from My Lord the Honourable Chief Justice, the appeal was referred to the Division Bench of this Court and the case has been argued before the Division Bench and ultimately, the Division Bench of this Court has given a finding, which is as follows: ".26. In the result, we answer the question, referred to us as follows: (i) If the contraband seized is either a mixture or a preparation with or without a neutral material, of any Narcotic Drug or Psychotropic Substance falling within the scope of entry No.239 of the notification dated 19.10.2001 issued in S.O.No.1055(E) of the Central Government, it is absolutely necessary to conduct Purity Test to ascertain the exact quantity of the Narcotic Drug/Psychotropic Substance contained in the said mixture or preparation. In the absence of Purity Test, as indicated, the contraband seized shall be construed only as a small quantity and accordingly, the accused shall be liable for punishment. (ii) In the case of contraband, which is neither a mixture nor a preparation falling within the sweep of entry No.239 and if the contraband is a

Narcotic Drug/Psychotropic Substance simplicitor, there is no need for Purity Test and in such cases, the entire quantity of Narcotic Drug/Psychotropic Substance shall be taken into consideration for deciding as to whether the same is a small quantity or a commercial quantity or an intermediate quantity for the purpose of conviction. (iii) In pending cases, including appeals, relating to the substances falling within the sweep of entry No.239, the Courts/Prosecuting Agency, may do well by forwarding the samples taken from the remaining contrabands in the custody of the Courts for Purity Test to estimate the percentage of Narcotic Drug/Psychotropic Substance in the mixture or preparation. In pending Criminal Appeals, the report of Purity Test may be received as additional evidence under Section 391 of the Code of Criminal Procedure. (vi) If any such request is made in respect of the pending cases, the Laboratory concerned shall give top priority and submit reports without delay. (vii) We make it clear that the ratio laid down in Michael Raj's case, regarding Purity Test and the answers given by us herein above shall be applicable to offences committed on or before 17.11.2009 alone."

16. In the substance of the order, it reveals that if Purity Test has not been obtained and not enclosed, then, it has to be construed as small quantity. As per the finding given by the Division Bench of this Court as well as the Single Judge of this Court vide order dated 05.04.2011, Purity Test is essential, even though the contraband has been seized from the accused. If Purity Test has not been conducted, then, it has to be construed as small quantity. For small quantity of the contraband, the accused should be punished under Section 21(a) of the N.D.P.S. Act and as per the provision of Section 21(a) of the N.D.P.S. Act, the punishment is only for six months. Therefore, the contraband possessed by the accused falls within the small quantity, for which the accused is punishable under Section 21(a) of the N.D.P.S. Act and not under Section 21(c) of the N.D.P.S. Act.

17. Hence, the conviction passed by the trial Court under Section 21(c) of the N.D.P.S. Act is liable to be set aside and accordingly, the same is set aside. Therefore, the appellant/accused is convicted under Section 21(a) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for six months.

18. The learned Counsel appearing for the appellant/accused represented that the accused has been in judicial custody for more than nine and half years.

19. Taking note of the fact that the appellant/accused has been in judicial custody for more than nine and half year, this Court is of the view that no fine amount has to be imposed on the appellant/accused.

20. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused in C.C.No.1627 of 2001 dated 28.04.2009, by the learned Special District and District and Sessions Judge for E.C. Act and N.D.P.S. Act cases, Madurai, is reduced to six months Rigorous Imprisonment and no fine amount has been imposed on the appellant/accused.

21. Since the appellant/accused has already undergone the sentence as modified by this Court, he is ordered to be set at liberty forthwith unless, his remand/detention is required, in accordance with law, in connection with any other case/proceedings. ss1 To 1. The Court of Special District and District and Sessions Judge for E.C. Act and N.D.P.S. Act cases, Madurai.

2. The Public Prosecutor, High Court, Madurai.

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