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Yassar Arafat vs State

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Court : Kerala

Decided On : Oct-28-2019

Judge : Honourable Mrs. Justice Annie John

Appeal No. : CRL.A/521/2007

Appellant : Yassar Arafat

Respondent : STATE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANNIE JOHN MONDAY, THE 28TH DAY OF OCTOBER 2019 / 6TH KARTHIKA, 1941 AGAINST THE JUDGMENT & ORDER OF CONVICTION AND SENTENCE PASSED ON 16.03.2007 IN SC.NO.15/2006 OF THE SPECIAL COURT (NDPS ACT CASES), VADAKARA APPELLANT/ ACCUSED : YASSAR ARAFAT, AGED 31 YEARS, S/O.ABOOTTY A.V., RESIDING AT KAYANADATH, HOUSE, JUBILEE ROAD, THALASSERY, KANNUR, DISTRICT. BY ADV. SRI.SURESH KUMAR KODOTH RESPONDENT/ COMPLAINANT-STATE :

STATE, REPRESENTED BY THE STATION HOUSE OFFICER, THIRUNELLI POLICE STATION, WYNAD DISTRICT, REPRESENTED

THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY SR. PUBLIC PROSECUTOR SRI.D.CHANDRASENAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-10-2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING :

JUDGMENT

The appellant was the accused in SC.No.15/2006 in connection with Crime No.15/1999 of Thirunelli Police Station, which was charge sheeted under Section 20 (b) (ii) (B) of the Narcotics Drugs and Psychotropic Substances Act,

1985 (for short, 'NDPS Act'). After trial, the court below found the appellant guilty of the offence and sentenced him to undergo rigorous imprisonment for one year and also directed to pay compensation of Rs.5,000/- and in default thereof to undergo rigorous imprisonment for three months. According to the appellant, the trial court erred in recording

the finding of the guilt of the appellant. The evidence is inconsistent and deplete with contradictions. There was no convincing and cogent evidence regarding the alleged recovery from the appellant. The appellant was only a pillion

rider and he was quite unaware of the possession of the ganja with the rider of the motorcycle. The quantity allegedly recovered is 1500 grams. It has come out in evidence that ganja containing in two cloth bundles weighed 1500 grams together with the cloths. There is no evidence that the cloths were weighing only less than 500 grams. It cannot also be assumed that the ganja recovered excluding

the cloths is more than 1000 grams. Therefore, the benefit under Section 20(b()(ii)(B) ought to have been extended to the petitioner being the small quantity.

2. The prosecution evidence consists of oral

testimony of PW1, who is the Sub Inspector of of Police who detected the offence. PW2 is an independent witness to the arrest and seizure. PW3 is the Circle Inspector, who initially investigated the case. PW4 is the Circle Inspector, who

further investigated the case. PW5 is the Village Assistant, who prepared Ext.P11 scene plan. Ext.P1 is the consent given by the appellant for search by the Sub Inspector under

Section 50 of the NDPS Act. Ext.P2 is the seizure mahaza

from the total quantity seized from the possession of the appellant. MO2 is the sealed packet of the remaining quantity of ganja. MO3 is the lunki in which the appellant had kept some quantity of ganja as a bundle and MO4 is the thorth in which the appellant had kept the remaining quantity of ganja. The bundle of ganja contained in the MO4 thorth was seized by the Sub Inspector on search of the body of the appellant.

3. Now the question to be considered is whether the seizure of the contraband articles from the possession of the appellant is in accordance with the provisions contained in the NDPS Act.

4. In fact, the offence was detected by the Sub

Inspector of Police, Thirunelli, who was examined as PW1. Ext.P2 is the seizure mahazar as per which the appellant was arrested on the spot and the quantity of ganja was seized. He has given cogent and convincing evidence with regard to the seizure of ganja from the possession of the appellant as per Ext.P2 mahazar. PW2 is an independent witness. He has also given evidence in accordance with the evidence of PW1. PW2 has given evidence to the effect that he had seen the Sub Inspector of Police, Thirunelli inspecting a motor cycle at Kattikulam at about 9.00 p.m. on 28.09.1999 and that the Sub Inspector had seized two bundles of ganja from the possession of the appellant, who was the pillion rider on the said motor cycle. He has further stated that some quantity of ganja contained in a lunki bundle was seized by the Sub Inspector from the hands of the appellant, and the remaining quantity contained in thorth bundle was seized by the Sub Inspector on search of the body of the appellant. He has further stated that the total quantity of ganja contained in the two bundles was mixed by the Sub Inspector and he had taken samples and the sample packets were well sealed. The remaining quantity of ganja was also well packed and sealed by the Sub Inspector. According to him,

the Sub Inspector had affixed labels on all the packets, and he had also put his signature in the labels. He has also admitted his signature on Ext.P2 seizure mahazar. PW2 has also identified MO1 series sample packets and MO2 sealed packet of the residue ganja, all bearing labels containing his signature which he identified in court. PW2 also stated that the rider of the motor cycle has eloped and the appellant was the pillion rider of the said motor cycle.

5. Now the question is whether Section 50 of the

NDPS Act is complied with. PW1 is the Sub Inspector of Police, who was alleged to have seized the contraband articles from the possession of the appellant. The Detecting Officer, who was examined as PW1 has deposed that while he was conducting vehicle checking at Thazhe Kattikulam in the night of 28.09.1999 with police party, he got secret reliable information that two persons would pass along the road with

ganja on a motor cycle. Immediately, he sent a report to that effect to the Circle Inspector, Mananthavadi, and started vigilent checking. While so, at about 9.15 p.m., the motor cycle No.KL 10 G 6855 came along the road from Bavali side. The rider of the motor cycle was one Hashim and the appellant in this case was the pillion rider. When he gave signal to stop the motor cycle, the rider stopped the vehicle and he ran off and escaped through the nearby bylane. But the pillion rider was caught and he was questioned. He expressed his intention to search the body of the appellant, and when he told about his right to be searched in the

presence of any Gazetted Officer or Magistrate. But the appellant waived his right and gave Ext.P1 consent for search. As consented by the appellant, he searched his body, and on search he got a thorth bundle containing some leafy material. When he opened and examined the lunki bundle seized from the hands of the appellant and the thorth bundle seized on his body search, he found ganja in both the bundles. When he separately weighed the ganja in the two bundles, the ganja contained in the lunki bundle was found having a weight of 800 grams and the ganja contained in the thorth bundle was

found having a weight of 700 grams. The total quantity of ganja was mixed and from the mixture, he took two samples of 20 grams each and the two samples were well packed and sealed. The remaining quantity of ganja was also well packed and sealed. The labels containing the signature of the appellant and the witnesses were affixed

on all the packets. The Sub Inspector identified the MO1 series sample packets, MO2 sealed packets of residue ganja, MO3 lunki in which the appellant had kept some 800 grams of ganja, and the MO4 thorth in which the appellant had kept 700 grams of ganja. The appellant was arrested on the spot and the properties were seized as per seizure mahazar. The appellant and the properties were taken to the police station where Ext.P3 FIR was registered, and thereafter Ext.P4 detailed report

was sent to the Circle Inspector. The defence could not bring out anything in the cross examination of PW1 to discredit his evidence. His evidence regarding the detection is fully consistent with Ext.P2 seizure mahazar and Ext.P3 FIR. PW2 has given evidence adduced by PW1. The appellant has taken evidence to the effect that he was not having possession of the ganja. In fact, the rider of the motor cycle was having the ganja and he was not aware of this fact. As per the evidence of PW1 and PW2, the ganja was directly seized from the possession of

the appellant. PW1 as well as PW2 had given evidence to the effect that the ganja was seized directly from the appellant as per MO3 lunki and MO4 thorh.

6. The case of the prosecution is that the ganja containing thorth and lunki were mixed together and out of that, the sample was taken and sent for analysis. According to the counsel for the appellant, the benefit of doubt should be given to the appellant because both the ganja containing the thorth and lunki would not

have mixed together. It would not have come under thecategory o

pleaded the benefit of small quantity in the matter of sentence. It was also argued that the ganja ought to have weighed separately by taking out of the thorth and lunki. But the lunki and thorth weighed would not have been more than 500 grams. The property list produced before the court contained the same description as

mentioned in Ext.P2 mahazar. It is true that PW1 has stated that the weight of the contraband articles includes the weight of the thorth and lunki. But later, it was clarified that thorth and lunki was separated while weighing ganja. So, there is no discrepancy in the evidence adduced by PW1 regarding the weight of the ganja. The prosecution has succeeded in proving that the appellant was in possession of more than 1 kg. of ganja.

7. Now the next question is whether the mixing of the contraband articles contained in the thorth and

lunki caused any prejudice to the appellant. The chemical analysis report would reveal that both the sample contained ganja and there was no dispute regarding any foreign substance contained in the sample. Ext.P10 is the chemical analysis report which would show that the entire quantity of material contained in the two samples was identified as genuine ganja consists of

flowering and fruiting tops. Nowhere in Ext.P10 it was stated that anything other than ganja was found in the sample on analysis. In view of Ext.P10 report of chemical analysis, it could not at all be found that prejudice had been caused to the appellant due to the mixing of the materials contained in two bundles. It is proved that MO2 contained in total quantity of materials seized from the possession of the appellant in this case. Ext.P10 report also support the case of the prosecution that MO1 series packets was identified as genuine ganja.

8. On going through the evidence, I do not find any ground to interfere with the judgment of the court

below. In fact, Section 50 of the NDPS Act is compliedwith.

in the nature of this case, only officials are the witnesses and their evidence cannot be discarded until and unless it is proved that they have got any prejudice to the appellant. No such question was put to PW1 that he has got any prejudicial mind towards the appellant. PW2 is only an independent witness, who was also present at the time of seizure of the contraband articles from the possession of the appellant. There is absolutely no evidence to prove that PW2 has got any vengeance towards the appellant. It is proved that the total quantity of the

contraband articles seized from the possession of the appellant was 1500 kgm. Therefore, the prosecution has succeeded in proving that the appellant has committed offence under Section 20(b)ii(B) of the NDPS Act.

9. It has also borne out that the offence was detected from a public place. So the compliance of Section 42 of the NDPS Act is not required. Further, the prosecution has succeeded in proving that Section 50 of

the NDPS Act is also complied with. Moreover, the appellant had given Ext.P1 consent letter to the PW1 to search his body in the absence of a Gazetted Officer or a

Magistrate. Ext.P4 is the detailed report send by PW1 to the Circle Inspector of Police for compliance of Section 57 of the NDPS Act. The appellant has no case that the samples were tampered by the detecting officer before producing the same before the court. In the absence of such evidence, I find that the interference of this Court is not warranted in this case. Moreover, PW1 had well complied with all the statutory requirements and that prosecution is not vitiated any noncompliance of statutory requirement in the process of detection and process of investigation. The lower court has granted

sentence to the appellant to undergo rigorous imprisonment for one year and also to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months. The appellant had undergone judicial custody after the apprehension of him. The offence was committed in the year 1999 and involvement of other crime is not brought before the court. Considering all these facts, I find that the sentence imposed on the appellant can be reduced to three months. In the result, the appeal is allowed in part by modifying the sentence imposed to the appellant and reduced it as he is sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for ten days. The remanded period shall be set off by invoking Sect.428 of the Cr.P.C. Sd/- ANNIE JOHN, JUDGE RKM

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