

Karuppiah Vs. State Through

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Court : Chennai

Decided On : Feb-18-2015

Judge : M.Sathyannarayanan

Appellant : Karuppiah

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 18.02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.305 of 2007 Karuppiah ..Appellant/ Sole Accused versus State through The Inspector of Police, Melavalavu Police Station, Madurai District.

(Cr.No.138 of 2006) ..Respondent/ Complainant Prayer Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in C.C.No.587 of 2006, dated 26.06.2007, by the learned Special District and Sessions Judge for EC Act and NDPS Act Cases, Madurai.

!For Appellant : Mr.S.Jeyasingh (No appearance) ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) Amicus Curiae : Mr.S.Balaji :

JUDGMENT

The appellant is the sole accused in C.C.No.587 of 2006 on the file of the Special Court for E.C.Act and NDPS Act Cases, Madurai and he stood charged and tried for the commission of the offences under Sections 8(c) r/w 20(b)(ii)(B) of the

Narcotic Drugs and Psychotropic Substances Act, 1985, (in short 'NDPS Act') and on filing a guilty memo, the trial Court, vide impugned Judgment, dated 26.06.2007, has convicted him under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act and sentenced him to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- with the default sentence of one month simple imprisonment and also ordered set off under Section 428 Cr.P.C and challenging the conviction and sentence recorded by the trial Court, the accused has filed this Criminal Appeal.

2.1.The name of the learned counsel appeared in the cause list.

However, he did not appear and hence this Court appointed Mr.S.Balaji, Advocate, to assist the Court.

Mr.S.Balaji, learned Amicus Curiae, has drawn the attention of this Court to the typed set of documents and would submit that only one witness has been examined on the side of the prosecution namely, Sub Inspector of Police, Melavalavu Police Station and as per her testimony at about 14.00 hours on 21.08.2006, she was patrolling on Alagarkovil-Kidaripatti Road and at that time she saw the accused with the bag and he told her that he brought ganja for retail sale.

The appellant/accused was informed of her right to make a search in the presence of a Judicial magistrate or a gazetted official and he has declined to do so and further stated that he can be searched in the presence of the police officials.

When the bag in the possession of the appellant/accused was opened, it contained 1.150 Kgs of ganga and out of that 100 grams ganja was drawn for sample and the remaining portion of ganja was sealed.

Thereafter, the accused was arrested and brought to the police station and a case was registered and subsequently he was sent for remand.

During trial, through P.W.1, Exs.P.1 to P.7 were marked and she would depose that the Inspector of Police has conducted the investigation and after completing investigation, has filed the final report.

2.2.The appellant/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

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

2.4.As already pointed out, at the time of questioning under Section 313(1)(b) Cr.P.C., the appellant/accused filed a memo pleading guilty to the charge framed against him and based on which, the trial Court has recorded conviction and sentence.

3.The learned Government Advocate (Criminal side) would submit that since the appellant/accused pleaded guilty to the charge framed against him, the trial Court was left with no other option, except to convict him and sentence him accordingly.

4.This Court, after considering the rival submissions and upon perusal of the materials available on record, is of the view that the manner of disposal done by the trial Court can hardly said to be satisfactory and it is against all canons of law and procedure.

The commission of offence under NDPS Act is serious in nature and the trial Court ought to have alive to the situation and de hors the filing of the memo pleading guilty to the charge, ought to have gone into the merits of the case for the reason that the said memo came to be filed only at the time of questioning under Section 313(1)(b) Cr.P.C., and before the trial Court, all the materials in the form of oral and documentary evidences were available.

Even as per the testimony of P.W.1, after effecting arrest, she did not sent a report under Section 57 of NDPS Act and admittedly the Inspector of Police who conducted investigation, collected materials and filed the final report, was not at all examined.

5.Admittedly, as per Exs.P.3 to 7, everything was done by the Inspector of Police, and this Court is not in a position to know how those exhibits came to be marked

through P.W.1-Sub Inspector of Police, who seized contraband and effected arrest and thereafter did not play any role.

The discharge of professional duty by the learned counsel for the appellant/accused before the trial Court, is also not in consonance with the duties and responsibilities cast upon him as a legal practitioner.

The legal profession is considered as a noble one and the counsel appearing for the defence is expected to advise the accused properly and guide him.

Unfortunately, he has not done anything except to send his client-appellant herein to the Jail.

6.In the light of the deficiencies pointed out above, this Court is of the view that the conviction and sentence recorded by the trial Court are to be set aside and the Criminal Appeal is liable to be allowed.

7.In the result, this Criminal Appeal is allowed and the conviction and sentence recorded by the learned Special District and Sessions Judge, (NDPS Act and EC Act Cases).Madurai, vide judgment dated 26.06.2007, passed in C.C.No.587 of 2006, are set aside and the appellant is acquitted of the charge framed against him.

The bail bonds executed by the appellant shall stand terminated.

The fine amount, if any, paid by the appellant, is directed to be refunded to him.

8.This Court place it on record, the valuable assistance rendered by the learned Amicus Curiae and High Court Legal Services Authority is to pay the remuneration to him as per norMs.Index :No 18.02.2015 Internet :Yes smn To 1.The Inspector of Police, Melavalavu Police Station, Madurai District.

2.The Court of Special District and Sessions Judge for EC Act and NDPS Act Cases, Madurai.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

4.High Court Legal Services Authority rep.

by its Secretary.

M.SATHYANARAYANAN,J.

smn

JUDGMENT

MADE IN CRIMINAL APPEAL(MD)No.305 of 2007 18.02.2015

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