

Iyyappan Vs. The State Represented By

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Court : Chennai

Decided On : Feb-18-2015

Judge : M.Sathyannarayanan

Appellant : Iyyappan

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 18.02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.393 of 2006 Iyyappan ..Appellant/ Sole Accused versus The State represented by The Inspector of Police, NIB CID, Dindigul, Dindigul District.

(Cr.No.162 of 2003) ..Respondent/ Complainant Prayer Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in C.C.No.151 of 2004, dated 26.06.2006, by the learned Special District and Sessions Judge for EC Act and NDPS Act Cases, Madurai.

!For Appellant : Mr.R.Anand ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) :

JUDGMENT

The appellant is the sole accused in C.C.No.151 of 2004 on the file of the Special Court for EC Act and NDPS Act Cases, Madurai and he stood charged and tried

for the commission of the offence under Sections 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).The trial Court, vide judgment dated 26.06.2006 has taken into consideration of the fact that the accused has pleaded guilty, has convicted him to undergo rigorous imprisonment for two years and fine of Rs.1,000/- with default sentence of three months rigorous imprisonment.

The trial Court has also ordered set off under Section 428 Cr.P.C.Aggrieved against the conviction and sentence passed by the trial Court, he has filed this Criminal Appeal.

2.The learned counsel for the appellant would submit that the appellant/accused has pleaded guilty on the advice of the counsel and before imposing the sentence, the trial Court in any event, ought to have put the appellant/accused notice with regard to the proposed sentence of imprisonment and it has failed to do so.

On merits of the case, the learned counsel for the appellant/ accused would submit that the contraband was seized on 22.11.2003 and it was sent for chemical analysis on 25.11.2003 and the prosecution has miserably failed to offer any explanation and also drawn the attention of the Court to the fact that the accused pleaded guilty only at the time of questioning under Section 313(1)(b) Cr.P.C.and in any event the trial Court ought to have scrutinised the oral and documentary evidence before recording conviction and it has failed to do so and hence he prayed for appropriate order.

3.Per contra, the learned Government Advocate (Criminal side) would submit that admittedly the appellant/accused was represented by Mr.D.Muthuraman and for the reasons best known to him, he has not chosen to cross-examine any of the prosecution witnesses and though the learned counsel for the appellant/ accused sought to make a complaint that on the advice of the trial Court counsel, the appellant/accused pleaded guilty, the said act on the part of the appellant remains intact.

Learned Government Advocate (Criminal side) would further submit that with regard to non-discharge of professional responsibility, no complaint whatsoever

has been lodged before the Bar Council of Tamil Nadu and therefore it is not open to the appellant to contend otherwise and prays for dismissal of this Criminal Appeal.

4.This Court has carefully considered the rival submissions and also perused the materials available on record.

5.1.P.W.3 was the Head Constable attached to Narcotic Intelligence Bureau Police Station, Dindigul and on 22.11.2003 at about 07.00 a.m.he mounted surveillance near Sembatty-Madurai Road, Nilakkottai Junction and about 08.00 p.m.he saw a person holding a white colour polythene bag and he was identified as the person, who was in possession of narcotics and accordingly he was intercepted and the concerned person informed of his right under the NDPS Act as to the search to be made upon him in the presence of a Judicial Magistrate or a Gazetted Officer and he has declined to do and asked the police officials to conduct the search and on search of the plastic bag, it contained 5 Kgs of ganja and after necessary formalities, samples were taken and mahazer was also drawn and thereafter the appellant/accused was brought to the police station at about 10.00 p.m.and his arrest was effected.

5.2.P.W.4 was the Sub Inspector of Police.

On receipt of the information given by the informant about the smuggling of ganja, at about 06.00 a.m.on 22.11.2003, he reduced into writing and informed the same to his immediate superior official and the same has been marked as Ex.P.8 and as per the directions of his immediate superior official, he mounted surveillance alongwith P.W.2 and other officials and the appellant/accused was caught with the contraband and his oral testimony is in consonance with the evidence of P.W.3.

5.3.P.W.5, Investigation Officer took up the investigation and after examining the statements of the police officials, who were present at the time of conducting search on the appellant/ accused, made a request for sending the sample for chemical analysis under Ex.P.2, which was concluded the substance found in the white polythene bag kept by the appellant/ accused is a narcotic substance namely ganja.

P.W.5 would further state that after completion of investigation, he filed a final report on 24.01.2004 charging the appellant/accused for the commission of the offence under Sections 8(c) r/w.20(b)(ii)(B) NDPS Act.

5.4.The prosecution apart from examining P.Ws.1 to 5, also marked Exs.P.1 to P.11 and M.Os.1 to 3.

5.5.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.

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

5.7.The trial Court based on the plea of guilty made by the appellant/accused has convicted him and imposed the sentence as stated above.

6.As rightly contended by the learned Government Advocate (Criminal side).the counsel engaged by the appellant/ accused during trial did not cross-examine any of the prosecution witnesses and seems to have advised him to plead guilty and accordingly he pleaded guilty.

Though, it is urged by the learned counsel for the appellant/accused that de hors the fact of pleading guilty by the appellant/accused, the lower Court ought to have gone into the merits, this Court is of the view that the said statement lacks merit and acceptance and in the considered opinion of this Court, the trial Court has rightly recorded conviction and sentence for the commission of the offence punishable under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act.

7.As regards the quantum of sentence, the learned counsel for the appellant/accused made an alternative plea that it is not made known by the prosecution that the appellant/accused had bad antecedents and in the light of the fact that the sentence of imprisonment awarded by the trial Court may be reduced.

8. On the said submission, this Court heard the learned Government Advocate (Criminal side). 9. This Court taking into consideration the alleged lapse on the part of the learned counsel for the appellant/accused before the trial Court and that taking into consideration the seized contraband was weighing about 5 Kgs and further no antecedents have been cited against him, this Court is of the considered view that the sentence of imprisonment awarded by the trial Court is to be reduced to one year.

10. In the result, this Criminal Appeal is dismissed, confirming the conviction under Sections 8(c) r/w. 20(b)(ii)(B) of NDPS Act recorded by the trial Court in C.C.No.151 of 2004, dated 26.06.2006, on the file of the Court of the learned Special District and Sessions Judge for EC Act and NDPS Act Cases, Madurai, however, the sentence of imprisonment of rigorous imprisonment for two years is reduced to rigorous imprisonment for one year and the sentence of fine with default sentence is maintained.

The bail bonds executed by the appellant/accused shall stand cancelled.

The respondent/Investigating Officer is directed to take expeditious steps to secure the appellant/accused to undergo the remaining period of sentence of imprisonment.

The period of incarceration already undergone by the appellant/accused during the course of the investigation and trial, is to be set off under Section 428 Cr.P.C. Index :No 18.02.2015 Internet :Yes smn To 1. The Inspector of Police, NIB CID, Dindigul, Dindigul 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.

M.SATHYANARAYANAN,J.

smn

JUDGMENT

MADE IN CRIMINAL APPEAL(MD)No.393 of 2006 18.02.2015

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