

1.Murugan Vs. The State Through

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Court : Chennai

Decided On : Mar-11-2015

Judge : M.Sathyannarayanan

Appellant : 1.Murugan

Respondent : The State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

11. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.426 of 2007 1.Murugan 2.Meera Mytheen ... Appellants/ A-1 & A-2 Vs. The State through The Inspector of Police, Ambasamuthram Police Station. (Cr.Nos.185 & 186/2002) ... Respondent/ Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in C.C.No.930 of 2003, dated 09.08.2007, by the learned Special District and Sessions Judge for EC and NDPS Act Cases, Madurai. !For Appellants : Mr.V.Ramalingam (Amicus Curiae) ^For Respondent : Mrs.S.Prabha, Govt. Advocate (Crl. Side) :

JUDGMENT

The appellants are arrayed as accused in C.C.No.930 of 2003 on the file of the Court of Special District and Sessions Judge for EC and NDPS Act Cases, Madurai and they stood tried, charged and convicted, vide impugned judgment

dated 09.08.2007, thus: Accused Conviction Sentence A-1 U/s.8(b) r/w 20(a)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (in short 'NDPS Act'). To undergo rigorous imprisonment for six years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months. A-2 U/s.8(b) r/w 20(a)(i) of the NDPS Act. To undergo rigorous imprisonment for six years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months. The trial Court has also ordered set-off under Section 428 Cr.P.C and challenging the legality of the same, the present Criminal Appeal is filed.

2. When the appeal was called on 11.02.2015, the learned Counsel for the appellants was absent and hence, the matter was directed to be listed on 25.02.2015 for appointment of Amicus Curiae and disposal. Once again, the learned Counsel for the appellants, was absent on 25.02.2015 and hence, this Court appointed Mr.V.Ramalingam, (Enrolment No.2662/2010) No.16, Law Chambers, Madurai Bench of Madras High Court, Madurai, as Amicus Curiae to assist this Court.

3. It is the submission of the learned Amicus Curiae appearing for the appellants that according to P.W.4, he received the information through the informant that A-1 and A-2 are rearing 'ganja' plants and accordingly, they along with the police party, proceeded to Vagaikulam village and went to the house bearing Door No.7/57, wherein in front of the said house, three ganja plants were reared by A-1 and tendered by A-2 and after complying with necessary formalities, has seized the contraband and also effected arrest of the accused and came back to the Police Station and registered a case in Cr.Nos.185 and 186 of 2002 and admittedly, the mandatory provisions under Section 42(2) of the NDPS Act, have not been complied with P.W.4 and hence, the appellants are entitled to be acquitted.

4. It is also the submission of the learned Amicus Curiae appearing for the appellants that even as per the own admission of P.W.1 and P.W.4, no materials have been collected to show that the house in which the ganja plants were reared, belonged to A-1 and in the absence of the said vital material, it cannot be concluded that A-1 and A-2 had committed the offences and prays for acquittal.

5. Per contra, Mrs.S.Prabha, learned Government Advocate (Criminal Side) for the respondent would submit that the respondent after due and proper compliance of all the formalities contemplated under the NDPS Act, has charge-sheeted the accused and by letting in oral and documentary evidence, has proved the guilt on the part of the accused beyond any reasonable doubt and prays for the dismissal of this appeal.

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

7. P.W.4, after investigation, has filed the final report on the file of the Court of Special District and Sessions Judge for EC and NDPS Act Cases, Madurai, charging the accused for the commission of the offences under Sections 8(b) r/w 20(a)(i) of the NDPS Act and on their appearance, the trial Court has furnished with them the copies of documents under Section 207 Cr.P.C. and later on, framed the issues and questioned them and they pleaded not guilty to the charges framed against them.

8. The respondent in order to sustain their case, has examined P.W.1 to P.W.5 and marked Exs.P.1 to P.6 and also marked M.O.1.

9. Both the accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false.

10. On behalf of the accused, D.W.1 was examined to show that the accused were taken into custody even in the early morning hours on 25.07.2002 and no documentary evidence was let in.

11. The trial Court on consideration of the oral and documentary evidence, has found that the accused had committed the said offences and convicted and sentenced them as stated above.

12. This Court, on going through the oral and documentary evidence and other materials available on record, is of the view that both the accused have to be

acquitted and this Criminal Appeal is to be allowed for the following reasons:

12. 1. According to P.W.4, he received the information through the informant about the rearing of ganja plants by A-1 and A-2. At the relevant point of time, P.W.4 is the Inspector of Police attached to Ambasamudram Police Station and his immediate official superior is the jurisdictional Deputy Superintendent of Police and admittedly, he did not send any report as contemplated under Section 42(2) of the NDPS Act. 12.2. It is to be pointed out that P.W.4 has also failed to submit a report under Section 57 of the NDPS Act and that apart, it is the admission of P.W.1 and P.W.4 that they have not collected any material to show that the house in which the ganja plants were reared at the relevant point of time, was in occupation of A-1 and it is not made known as to whether A-1 is the owner or the tenant of the said house. 12.3. Insofar as the role played by A-2 is concerned, it is alleged that he tendered the ganja plants reared by A-1 and the evidence in this regard, is absolutely lacking. 12.4. Since the respondent/prosecution has failed to comply with the mandatory provisions under Section 42(2) of the NDPS Act and moreover, P.W.4 has also failed to submit a report under Section 57 of the NDPS Act and further that they failed to collect any material as to the possession of the house on the part of A-1 and that the only role played by A-2 in assisting A-1, this Court is of the view that the appellants/A-1 and A-2 are entitled to be acquitted.

13. In the result, this Criminal Appeal is allowed and the judgment passed in C.C.No.930 of 2003, dated 09.08.2007, by the learned Special District and Sessions Judge for EC and NDPS Act Cases, Madurai, is set aside and the appellants/A-1 and A-2 are acquitted of the charges levelled against them. The bail bonds executed by them shall stand terminated and the fine amount, if any, paid by them, is directed to be refunded to them.

14. This Court placed on record the valuable assistance rendered by Mr.V.Ramalingam, learned Amicus Curiae appearing for the appellants and the High Court Legal Services Authority is directed to pay the remuneration to him as per the norms. Index :Yes/No 11.03.2015 Internet :Yes/No rsb To 1.The Inspector of Police, Ambasamuthram Police Station. 2.The Court of Special District and Sessions Judge for EC and NDPS Act Cases, Madurai. 3.The Additional Public

Prosecutor, Madurai Bench of Madras High Court, Madurai. 4.The High Court Legal Services Authority, Madurai Bench of Madras High Court, Madurai. 5.Mr.V.Ramalingam, [Enrolment No.No.2662/2010]. Amicus Curiae, No.16, Law Chambers, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

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