

Chithira Vs. State : Through

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Court : Chennai

Decided On : Mar-18-2015

Judge : M.Sathyannarayanan

Appellant : Chithira

Respondent : State : Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

18. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.171 of 2008 Chithira : Appellant/Sole Accused Vs. State : through The Inspector of Police, B-7 Thideer Nagar (L&O) Police Station, Madurai City, In Cr.No.136 of 2007. : Respondent/Complainant Prayer : Appeal filed under Section 375 r/w 382 of Criminal Procedure Code, against the judgment passed in C.C.No.292 of 2007, dated 22.01.2008, by the Special Court for EC and NDPS Act Cases, Madurai. !For Appellant : Ms.U.Maheshwari Amicus Curiae ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) :

JUDGMENT

The matter was called on 25.02.2015 and the learned counsel appearing for the appellant/accused sought time and, therefore, the matter was adjourned and listed today. When the matter is called today, the learned counsel appearing for the

appellant/accused is absent. Since the appeal is directed against the conviction and sentence passed by the Trial Court, this Court has appointed Ms.U.Maheshwari, learned counsel, as Amicus Curiae, to aid and assist the Court.

2. The sole accused in C.C.No.292 of 2007 on the file of the Special Court for EC and NDPS Act Cases, Madurai, was charge sheeted for the commission of the offence under Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act'), and vide impugned judgment dated 22.01.2008, the Trial Court has convicted her to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,000/- with the default sentence of six months rigorous imprisonment. The Trial Court has also ordered set off under Section 428 Cr.P.C.

3. The facts leading to the filing of this Criminal Appeal, briefly narrated, are as follows:

3. 1. On 23.01.2007 at about 08.30 a.m., when the Sub-Inspector of Police, attached to the respondent, enquired the appellant/accused along with his police party, beneath Southern side of Dinathanthi New Bridge, Madurai Town, she was found in possession of 1.500 Kilograms of Ganja, without any permission or licence, and hence, a case in Crime No.136 of 2007 was registered against her and after conducting investigation, the respondent police laid the final report, charging the offence punishable under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act.

3.2. The Special Court for EC and NDPS Act Cases, Madurai, on filing of the charge sheet, took it on file in C.C.No.292 of 2007 and on appearance of the accused, furnished with her, the copies of documents under Section 207 of Code of Criminal Procedure and on appearance of the accused on the next hearing date, the Trial Court framed the charges under Section 8(c) read with Section 20(b)(ii)(B) of NDPS Act and questioned her and she pleaded guilty to the charges framed against her and after recording the same, it was read over to the accused and thereafter, her signature was obtained.

3.3. Since the accused herself accepted her guilt, the Trial Court, on consideration of the materials available on record, has convicted and imposed the sentences as stated above.

4. Aggrieved by the conviction and sentence passed by the Trial Court, the appellant/accused has filed this appeal.
5. The learned Amicus Curiae has invited the attention of this Court to the materials in the form of typed-set of documents and would submit that according to the prosecution, on 23.01.2007 at about 08.30 a.m., the appellant/accused, namely Chithira, without any permission or licence, had concealed 1.500 Kilograms of Ganja, beneath Southern side of Dinathanthi New Bridge, Madurai Town and consequently, she was charged for the commission of the offences. It is the further submission of the learned Amicus Curiae that the appellant/accused, while answering to the charge framed against her, has pleaded guilty and it was recorded and it was read over to her and she, having accepted the same, the Trial Court has convicted and imposed the sentence as stated above and before imposition of sentence, the Trial Court ought to have put the appellant/accused on notice as to the period of imprisonment to be imposed on her and without following the procedure contemplated under law, the Trial Court has convicted her and sentenced to undergo imprisonment of four years with the default sentence and on the face of it, the conviction and sentence imposed by the Trial Court is unsustainable.
6. Per contra, the learned Government Advocate (Criminal side) would contend that since at the time of framing the charge, the appellant/accused has admitted her guilt, the Trial Court was left with no other option except to convict her and sentence her, in commensurate with the gravity of the charge and accordingly, it has done so and prays for dismissal of this appeal.
7. This Court has carefully considered the rival submissions and also perused the typed-set of documents.
8. A perusal of the impugned judgment would disclose that the appellant/accused was represented by Mrs. Justina, Advocate. It is a well settled position of law that the offences under Narcotic Drugs and Psychotropic Substances Act, are serious in nature and so also, the punishment to be inflicted on finding the accused guilty is also very severe and in the light of the same, strict compliance of the provisions of the Narcotic Drugs and Psychotropic Substances Act, more particularly,

Sections 42(2), 50 and 57 of NDPS Act, is mandated.

9. It is pointed out by the learned Amicus Curiae that the appellant/accused is a lady and she is a semi-literate and she is not even able to put her signature properly and, therefore, it is obligatory on the part of the Trial Court to verify as to whether the mandate under the above said provisions of the NDPS Act, have been complied with by the prosecution or not. But, unfortunately, the Trial Court as well as the learned counsel appearing for the appellant/accused therein have failed to discharge their duties properly and prays for interference.

10. This Court finds considerable force in the submission made by the learned Amicus Curiae. The prosecution has failed to produce any material to show as to the compliance of Section 42(2), 50 and 57 of NDPS Act and it is under mandate as per the provisions of the above said Act to comply with the same. The appellant/accused, being a semi-literate, seems to have been given a wrong advice by the counsel appearing for her and she pleaded guilty to the charges framed against her. The Trial Court, before imposing the sentence, ought to have put the appellant/accused on notice as to the quantum of sentence, but it has failed to do so and has inflicted a severe sentence of four years rigorous imprisonment with the default sentence, though, finds, it is a small quantity.

11. In the absence of any materials placed by the prosecution, the conviction and sentence awarded by the Trial Court against the appellant/accused for the commission of the above said offence, in the considered opinion of the Court, warrants interference.

12. In the result, the Criminal Appeal is allowed and the conviction and sentence passed in C.C.No.292 of 2007, vide judgment dated 22.01.2008, by the Special Court for EC and NDPS Act Cases, Madurai, are set aside and the appellant/accused is acquitted of the charges framed against her. The bail bonds executed by the appellant/accused shall stand terminated. The fine amount, if any, paid by the appellant/accused, is directed to be refunded to her.

13. This Court placed on record the valuable assistance rendered by Ms.U.Maheshwari, learned Amicus Curiae, in helping the Court to arrive at a fair

decision.

14. The High Court Legal Services Committee, attached to the Madurai Bench of Madras High Court, is directed to pay the remuneration, as per norms, to the learned Amicus Curiae. 18.03.2015 Index:Yes/No Internet:Yes/No Note to office: Registry is directed to mark a copy of this judgment to the High Court Legal Services Committee, attached to the Madurai Bench of Madras High Court. To 1.The Special Court for EC and NDPS Act Cases, Madurai. 2.The Inspector of Police, B-7 Thideer Nagar (L&O) Police Station, Madurai City, In Cr.No.136 of 2007. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN, J SML Judgment made in Criminal Appeal (MD)No.171 of 2008 Dated:

18. 03.2015

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