

Anbalagan Vs. State

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Court : Chennai

Decided On : Mar-12-2002

Reported in : 2003(85)ECC256

Judge : M. Karpagavinayagam, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20 and 57; Code of Criminal Procedure (CrPC) - Sections 241 and 242

Appeal No. : Cr. Appeal No. 383 of 1998

Appellant : Anbalagan

Respondent : State

Advocate for Def. : E. Raja, Addl. Public Prosecutor

Advocate for Pet/Ap. : S. Shanmugavelayutham, Adv.

Disposition : Appeal allowed

Judgement :

M. Karpagavinayagam, J.

1. Anbalagan, the appellant herein was convicted for the offence under Section 8(c) r/w 2(b)(i) of the NDPS Act and sentenced to undergo R.I. for four years and to pay a fine of Rs. 20,000 in default to undergo R.I. for one year. Challenging the

same, this appeal has been filed.

2. According to the prosecution, on 16.12.1997 at about 11.45 a.m., the appellant was in possession of Ganja weighing about 1.5 kgs. in white plastic gunny bag. The contraband was seized and he was arrested for the offence. After the investigation was over, the charge-sheet was filed for the offence under Section 8(c) r/w 20(b)(1) of the NDPS Act.

3. The charges were framed on 6.3.1998 for the said offence alongwith Section 3(1) of NDPS Act since he was previously convicted for the similar offence. When the charge was explained to him on 6.3.1998, he pleaded 'not guilty', though he admitted that he was previously convicted for the similar offence. Therefore, the date 20.4.1998 was fixed for examination of witnesses. On 20.4.1998, he pleaded guilty and on the basis of the said plea, he was convicted. This conviction is under challenge before this Court in the Appeal.

4. I heard the learned counsel for the appellant and the Additional Public Prosecutor appearing for the respondent.

5. On going through the judgment impugned, it is clear that the same is illegal in view of the decision rendered by this Court in Kuppusamy in re 1967 1 LW 1. As per Section 240 Cr. P.C., when the charge is explained to the accused, the accused can either plead guilty or not guilty. If the accused pleads guilty, he can be convicted under Section 241 of Cr. P.C. and if he does not plead guilty and claims to be tried, then the trial Court, under Sec. 242 of Cr.P.C., shall fix a date for the examination of witnesses. Thereafter, on the date fixed, the trial Court shall proceed to take such evidence as may be produced in support of the prosecuting.

6. In this case, since the accused pleaded not guilty on 6.3.98, the trial Court fixed the date for examination of witnesses as 20.4.1998 as contemplated under Section 242, Cr.P.C. It is seen from the judgment impugned that on 20.4.1998, the witnesses did not turn up even though summons were served on them. It is also noticed that the counsel for the accused also was not present. At that juncture, the accused pleaded guilty and the same was acted upon by the trial Court to convict the accused for the offences referred to above.

7. This procedure is clearly wrong, in view of the above judgment reported in 1967 LW (Cri.)1. The trial Court ought to have posted the matter on some other date to enable the prosecution to produce the witnesses and after examination of those witnesses, the accused must be questioned under Section 313, Cr.P.C. with reference to the plea of guilty. Therefore, the trial Court has committed a grave illegality in entertaining the plea of guilty, especially when the trial Court has proceeded to the stage of commencement of trial under Section 242, Cr.P.C. Consequently, the conviction is liable to be set aside.

8. It is noticed from the decision above that when such an illegality is found, the case can be remanded for re-trial. In this case, though this Court could remand the matter for trial, it is felt that the remand is unnecessary, in view of the long lapse of time and also on the fact that report under Section 57 is not available in the case records and as such, this may affect the search and seizure of the records during trial.

9. Under those circumstances, I am of the view that it is not worthwhile to remand the matter for re-trial. Therefore, this appeal is allowed. Consequently, the conviction and sentence is set aside. Fine amount, if paid, shall be refunded to the appellant.

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