

S.S. Rajan Vs. State

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Court : Chennai

Decided On : Sep-21-2007

Reported in : 2008CriLJ639

Judge : T. Sudanthiram, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 35;
[Evidence Act, 1872](#) - Sections 25; Code of Criminal Procedure (CrPC) - Sections 173(5)

Appeal No. : Cri. OP. (MD) No. 5791 of 2004

Appellant : S.S. Rajan

Respondent : State

Advocate for Def. : N. Senthur Pandian, Addl. P.P.

Advocate for Pet/Ap. : T.K. Gopalan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T. Sudanthiram, J.

1. The petitioner is the sixth accused in C.C. No. 571 of 2003 on the file of the learned Special Judge for [Narcotic Drugs and Psychotropic Substances Act, 1985](#).
2. The case of the prosecution is that on 13-2-2003 at 2.30 p.m., while the Inspector of Police, T. Kallupatti Police Station, was going on raid, he found 300 Ganja plants being cultivated by accused 1 to 5 in the guava garden which belongs to the petitioner/A-6.
3. Learned Counsel for the petitioner submitted that though this petitioner is the owner of the land, without his knowledge, the first accused who is the watchman of the garden with the connivance of accused No. 2 to 5 cultivated Ganja in the land. Even as per the materials available with the prosecution except the fact the petitioner is the owner of the land, there is no other material either to show that the petitioner had the knowledge about the cultivation of the Ganja or accused 1 to 5 acted on the instructions from this petitioner/accused.
4. Learned Counsel further submitted that as per the statement of the witnesses and other documents, absolutely there is nothing to show that the petitioner had anything to do with the cultivation of the Ganja. In the absence of any materials to connect the petitioner with the other co-accused, the proceedings against him are liable to be quashed.
5. Learned Counsel for the petitioner relied on the decision reported in Soorajmal v. The State of Madhya Pradesh 1992 Cri LJ 3206 in which it is observed in paragraphs 7 and 8 as follows:
 7. ...The circumstances do not indicate that the contraband could not have been kept on the field of Surajmal without his having knowledge of it. It is after all; an open field, to which anyone could have had an access in the absence of the owner and especially when the owner had engaged a servant for looking after the field, the possibility of a servant engaging himself in illegal activities without the knowledge of his master cannot be ruled out. As no evidence to connect the master with the contraband has been collected, it appears that the police have implicated Surajmal solely because he is the owner of the field from which contraband opium was recovered.

8. The question, therefore, is whether ownership and consequent possession of an open field is sufficient to infer that contraband opium found on the field was also possessed by the owner of the field? It must be remembered that possession of contraband opium and not the possession of the field is an offence. For proceeding against a person under the N.D.P.S. Act, it will have to be shown that he was in possession of contraband article.

6. Learned Additional Public Prosecutor was heard. Though, learned Additional Public Prosecutor had admitted that except the fact that the petitioner is the owner of the field where the Ganja plants were cultivated, there is no material to connect the petitioner with regard to the cultivation, but pointed out Section 35 of the N.D.P.S. Act, 1985, which reads as follows:

35. Presumption of Culpable Mental State:

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:-- In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

7. On the basis of Section 35 of the NDPS Act, learned Additional Public Prosecutor submitted that the burden is on the petitioner to prove that he had no knowledge about the cultivation of the Ganja plants in his fields.

8. This Court considered the submissions made by both parties and perused the statement of all the witnesses recorded by the police and other materials filed under Section 173(5), Cr.P.C.

9. The statement of witnesses do not connect this petitioner with regard to the cultivation of Ganja plants. Apart from that, in the confession statement of the first accused recorded by the police, it is stated that while he was working in the field, accused 2 to 5 approached him and questioned him whether the owner of the land would visit that place and as he replied that he would not come there, they induced the first accused to cultivate the Ganja plants and thereby to earn Rs. 3,00,000/- within six months.

10. Learned Counsel for the petitioner submitted that though as per Section 35 of the Act with regard to the culpable mental state can be presumed, unless the initial burden is discharged, no such presumption can be drawn with the help of Section 35 of the Act. Learned Counsel for the petitioner further submitted that in the absence of any material to connect the petitioner with the alleged offence, mere presumption would not constitute an offence. Learned Counsel also relied on the decision of this Court reported in *Mayil Vahanan v. Intelligence Officer, Narcotic Control Bureau, South Zone, Chennai* 2006 (2) MLJ 248 : 2007 Cri LJ 7 (Mad), wherein it is observed in paragraph 20 as follows:

20. As there is no material on record implicating the petitioner prima facie that he had committed an offence as projected by the prosecution, no charge can be framed as against him. The presumption under Section 35 of the NDPS Act, will come into play only in a case where there is some material to rope in the petitioner in the offence alleged. The Court cannot presume animus of the petitioner to commit an offence under NDPS Act, without any scrap of evidence available on record except the confession statements of the co-accused, which are found to be not legal evidence. The presumption of culpable mental state without any iota of material as against a person will be a very dangerous trend....

11. The observation made in the decision cited supra, is applicable to the facts of this case also. Further, in this case, apart from the fact that there is no material connecting this petitioner with regard to the cultivation of the Ganja plant, the confession of the first accused shows that the petitioner had no involvement and had no knowledge about the cultivation of the Ganja plants.

12. Though the confession statement given by an accused to the police officer cannot be used during the trial, as per Section 25 of the Indian Evidence Act, it may not be wrong for taking into consideration if it is in favour of the accused. Section 25 of the Indian Evidence Act reads as follows:

25. Confession to Police Officer not to be proved:

No confession made to a police officer shall be proved as against a person accused of any offence.

As per Section 25 of the Evidence Act, a confession shall not be proved as against a person accused of any offence. But, there is no bar if it is in favour of an accused. Though it cannot be said that a portion of the confessional statement of an accused which is in favour of any accused, it should be considered or it should be accepted by the Court, still, in the absence of any material with the prosecution contra to that statement, then the Court may take into consideration in extraordinary circumstances.

13. In view of the facts stated above in this case, no useful purpose would be served to the prosecution by putting the petitioner/ A-6 in trial. Therefore, the proceedings in respect of the petitioner/A-6 alone is quashed. The criminal original petition is allowed. Consequently, connected miscellaneous petition is also closed.

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