

Muthuraman Vs. State

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Court : Chennai

Decided On : Mar-07-2013

Judge : T.Sudanthiram

Appellant : Muthuraman

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED ::

07. 03.2013 CORAM :: THE HONOURABLE MR.JUSTICE T.SUDANTHIRAM
Crl.A.Nos.593 and 769 of 2012 And M.P.No. 1 of 2013 Crl.A.No. 593 of 2012:
Muthuraman @ Muthuramalingam ... Petitioner/Appellant Vs. State rep. by
Inspector of Police B-5 Sankar Nagar Police Station Chenna

074. ... Respondent/Complainant PRAYER: Appeal filed under Section 374(2)of
Cr.P.C., against the judgment, dated 23.08.2012 under NDPS Act by the learned
Principal Special Judge, Special Court for NDPS Act, Chennai, in C.C.No. 42 of
2004, convicting and sentencing the appellant to undergo 3 years RI and pay a
fine of Rs.10,000/- (Rupees ten thousand only) in default to undergo further period
of one month RI under Section 8(c) read with 20(b)(ii)(B) of NDPS Act 1985 as
amended by Act 9 of 2001 to set aside the same. *** Crl.A.No. 769 of 2012: State
rep. by Inspector of Police B-5 Sankar Nagar Police Station Chennai (Crime No.
1569/2003) ... Appellant/Complainant Vs. Muthuraman @ Muthuramalingam ...
Respondent/Accused PRAYER: Appeal filed under Section 377 of Cr.P.C., against

the judgment, dated 23.08.2012 in C.C.No. 42 of 2004 passed by the learned Principal Special Judge, Special Court under E.C. and NDPS Act, Chennai 104 and pray that this Honourable Court may be pleased to enhance the conviction and sentence of the respondent/accused for the charges framed against him. *** For Appellant in Crl.A.No. 593/2012 : Mr.R.C.Paul Kanagaraj For Respondent in Crl.A.No. 593/2012 : Mr.P.Govindarajan Additional Public Prosecutor For Appellant in Crl.A.No. 769/2012 : Mr.P.Govindarajan Additional Public Prosecutor For Respondent in Crl.A.No. 769/2012 : Mr.R.C.Paul Kanagaraj C O M M O N

The appellant in Crl.A.No. 593 of 2012 who is also respondent in Crl.A.No. 769 of 2012, is the accused in C.C.No. 42 of 2004, on the file of the Special Court for NDPS Act, Chennai.

2. A charge was framed by the trial Court against the accused for an offence under Section 8(c) read with 20(b)(ii)(C) of NDPS Act 1985, but he was convicted for the offence under Section 8(c) read with 20(b)(ii)(B) of NDPS Act 1985 and sentenced to undergo three years of rigorous imprisonment and also to pay a fine of Rs.10,000/-, in default to undergo one month rigorous imprisonment. Challenging the said conviction and sentence, the accused has preferred an Appeal in Crl.A.No. 593 of 2012. As the accused was not convicted for the offence under Section 8(c) read with 20(b)(ii)(C) of NDPS Act 1985, the State has preferred an Appeal in Crl.A.No. 769 of 2012 before this Court, seeking to modify the conviction of the accused under Section 8(c) read with 20(b)(ii)(C) of NDPS Act 1985 and also for the enhancement of sentence of imprisonment imposed on the accused.

2. The case of the prosecution, in brief, is as follows:- On 13.02.2003 at about 1.00 p.m., P.W.1 Sub Inspector of Police, B.5, Shankar Nagar Police Station, received an information from an informant that the accused viz., Muthuramalingam @ Muthuraman was transporting Ganja in a two wheeler to the place at Ella Rajamanickam Street, 3rd Cross, Lakshmi Nagar, Pozhichalur, between 1.45 p.m., to 3.15 p.m. P.W.1 recorded the said statement under Ex. P-1 and he went to the scene of occurrence along with his staff and he kept surveillance. He saw the accused coming in a red colour two wheeler with a gunny bag and he was identified by the informant. P.W.1 intercepted the accused and enquired him. The

accused identified himself as Muthuraman @ Muthuramalingam. P.W.1 informed the accused about his right to make a search under the NDPS Act and then he was searched by the Sub Inspector of Police. At that time, from the public, no one came forward to stand as independent witness. In the presence of P.W.2 Head Constable and another Head Constable of Robinson, when the vehicle of the accused was searched in the carrier of the vehicle, a polythene bag was found containing Ganja. The said Ganja was weighed and it was found to be weighing 26 kgs. Two samples, weighing 50 grams each were collected. Mahazar Ex. P-3 was prepared and the accused was arrested and P.W.1 brought the accused to the police station and he prepared the First Information Report under Ex. P-6. P.W. 1 handed over the accused, seized contraband and other documents along with report under Section 57 of the NDPS Act under Ex. P-7 to P.W.4. After receipt of the same, P.W.4 Inspector of Police, sent the accused for the remand and he gave requisition to the Court to send the property for chemical examination. P.W.3 Chemical analyst has also given a report under Ex. P-11 stating that the sample analysis was Ganja. P.W. 4, after completing investigation, laid the final report against the accused.

3. In order to prove the case, the prosecution examined PWs 1 to 4 and marked Exs. P-1 to P-12 and produced the material objects Mos.1 to 4. After closure of the evidence, the accused was examined under Section 313 Cr.P.C. and he also examined D.W.1 and marked Ex.D-1 photograph published in Dinamalar Daily. Ex.C-1 is a receipt, dated 17.12.2003, showing the weightage of Ganja.

4. The trial Court, on analysing the evidence, observing that the prosecution proved its case that the accused was in possession of Ganja but failed to prove that the seized Ganja was a commercial quantity, convicted and sentenced the accused as already stated above.

5. The learned Additional Public Prosecutor submitted that the trial Court though having observed that the prosecution proved possession of Ganja by the accused, had erroneously observed that the prosecution has not proved that the contraband seized was a commercial quantity of 26 kgs. Even as per Ex. C-1, the Ganja totally weighed about 25 kgs and 935 grams. The learned Additional Public Prosecutor

drew the attention of this Court regarding the reason given by the trial Court and submitted that the trial Court on mere surmises had come to the conclusion that the Ganja seized was not the commercial quantity.

6. Learned counsel appearing for the appellant/accused submitted that the prosecution had not proved its case that the contraband was seized from the accused and therefore, the very conviction itself is not sustainable. Admittedly, the prosecution has not examined any independent witness to prove the alleged seizure of contraband. The learned counsel drew the attention of this Court to the evidence of P.W.1 and submitted that though P.W. 1 Sub Inspector of Police claimed that no independent witness had come forward to stand as a witness, when the contraband seized in the presence of police witness, he had not mentioned the said fact in the Mahazar, but P.W.3 had mentioned the names of two persons in the FIR as if they were called and they refused to stand as a witness. According to the prosecution, the place of occurrence is a busy locality and there are number of shops and houses available and as such, P.W. 1 did not make any attempt to get any other independent witnesses. The learned counsel for the accused further submitted that though according to the prosecution case, the seal was affixed on the sample packet and on also the contraband seized as per Ex. D-1, the said contraband was kept in several packets, whereas according to P.W. 1, the contraband was kept in a gunny bag.

7. Per contra, the learned Additional Public Prosecutor submitted that non examination of the two independent witnesses by name, Munnusamy and Siva, does not affect the case of the prosecution since the said fact has already been clearly mentioned in the FIR prepared by P.W.1.

8. This Court considered the submissions and perused the records.

9. According to the prosecution case, a huge quantity of Ganja ie., 26 kgs were seized from the accused. In order to prove the said seizure, P.W. 1 Sub Inspector of Police and P.W. 2 Head Constable who had signed the mahazar Ex.P-3, have given evidence. No independent witness was examined by the prosecution. Ofcourse, it is not mandatory that mahazar of seizure should be proved by independent witnesses. In this case, P.W. 1 before going to the spot, he had

received information, but he did not take along with him any independent witness. P.W.1 had admitted that the place of occurrence was a busy locality and there were number of shops and houses were available. P.W. 1 had simply stated that he called two persons by name Munnusamy and Siva to stand as witnesses, but they refused to do so. It is not the case of P.W. 1 that he took any action against those two persons, who refused to act as witnesses as per Section 100(8) of Cr.P.C., which reads as follows: "Any person who, without reasonable case, refuses or neglects to attend and witness a search under this Section, when called upon to do so by an order in writing delivered or tendered to him, shall he deemed to have committed an offence under Section 187 of the IPC (145 of 1860)".

10. Furthermore, though as per Ex.P-6 FIR P.W.1 called two persons, by name Munnusamy and Siva, to stand as witnesses, but they refused. As per Ex. P-7 report given by P.W.1 to the Inspector of Police under Section 57 of the NDPS Act, the contraband was seized under the cover of Mahazar duly attested by two witnesses, namely, Munusamy and Siva. In the present case, Ex. P-7 is totally contradictory to Ex.P-6 FIR. Those two contradictory documents of the prosecution throws a considerable doubt with regard to the case of the prosecution regarding the seizure of contraband from the accused.

11. In the above said circumstances, in this particular case, the non examination of any independent witness to prove the alleged seizure of contraband affects the prosecution case. Consequently, it is held that the prosecution has not proved the case beyond reasonable doubt that the contraband of Ganja was seized from the accused.

12. The CrI.A.No. 593 of 2012 is allowed. The conviction and sentence on the accused imposed by the trial Court are set aside. Consequently, connected Miscellaneous Petition is closed. The fine amount, if any paid by the accused, shall be refunded. The appeal in CrI.A.No. 769 of 2012 preferred by the State is dismissed. 07.03.2013 Index : Yes/No Internet : Yes/No vsg To 1. Inspector of Police B-5 Sankar Nagar Police Station Chennai

074. 2. The Principal Special Judge Special Court for NDPS Act, Chennai 3. The Additional Public Prosecutor High Court, Madras T.SUDANTHIRAM, J.

vsg Crl.A.Nos.593 and 769 of 2012 And M.P.No. 1 o

07. 03.2013

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