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Madras High Court

Case No: Criminal Appeal No. 765 of 1996

Paulraj	APPELLANT
Vs	
Sub Inspector (Law and Order)	RESPONDENT

Date of Decision: Oct. 24, 2002

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20(1), 52(3), 55

Hon'ble Judges: V. Kanagaraj, J

Bench: Single Bench

Advocate: Paulraj, for the Appellant; A.N. Thambidurai, Government Advocate, for the Respondent

Judgement

1. This Criminal Appeal is directed against the judgement dated 20.09.1996 made in C.C.No.11 of 1993 on the file of the Assistant Sessions Judge, Udumalpet. The appellant herein is the accused.

2. The learned Assistant Sessions Judge, Udumalpet, found the appellant/accused guilty u/s 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act and convicted and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/-, in default to undergo a further R.I. for six months.

3. Tracing the history of the appeal, it comes to be known that a case in Crime No.313/91 of Pollachi West Police Station was registered alleging that on 16.11.1991, P.W.1, who is the Police Constable attached to the Pollachi West Police Station, was on a prohibition raid along with other Police Constables, Dharmaraj and Vasudevan at Pollachi Sandy, that at about 08.30 p.m., at Oil Shops line of Pollachi Sandy, the appellant/accused, who was standing with a parcel, on seeing P.W.1 and the other Police Constables, tried to run away; that P.W.1 and the other Police Constables caught and checked him and they found him carrying ganja weighing 100 grams, that they arrested the appellant/accused at the spot itself and brought him to the Police Station and registered a case in Cr.No.313 of

1991 u/s 20(b)(1) of the N.D.P.S. Act and placed the same before the higher Officials, and that during the course of the investigation, the ganja was sent to chemical examination under Ex.P.1 and the report thereon is Ex.P.2.

4. The prosecution has examined two witnesses as P.Ws.1 and 2, namely, P.W.1 the Constable and P.W.2 the Sub Inspector of Police attached to Pollachi West Police Station, and marked two documents as Exs.P.1 and P.2, namely, requisition for sending the ganja to chemical examination and the report thereon respectively. They also marked M.O.1 ganja seized from the accused.

5. In full consideration of the oral and documentary evidence, the learned Assistant Sessions Judge found the appellant/accused guilty u/s 20(b)(1) of the N.D.P.S. act and convicted and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo R.I. for six months, against which the appellant has preferred this appeal contending that the provision u/s 41 of the N.D.P.S. Act, the formalities in respect of the procedure of arrest, has not been followed, that the Lower Court has not followed the provisions under Sections 55 and 52(3) of the N.D.P.S. Act, that there was no independent witnesses and therefore, the order of conviction passed by the Court below based on interested testimony of P.Ws.1 and 2 is legally unsustainable, that the mandatory provisions u/s 50 of the N.D.P.S. Act has not been complied with, that the provisions u/s 42(2) of the N.D.P.S. Act has not been complied with, that there was delay of 32 days in sending the seized object for chemical examination, that the F.I.R. and Mahazer have not been marked, and that the provisions u/s 57 of the N.D.P.S. Act have not been complied with.

6. The judgement of the Trial Court has been delivered on 20.09.1996 and the appellant/accused has been released on bail by the High Court by its order dated 28.01.1997. The appellant has remitted the fine amount.

7. During arguments, the learned Counsel appearing on behalf of the appellant would crisply submit that the case on hand has been registered against the appellant herein not only in a irregular manner, but also absolutely without following the procedures established by law, and without compliance of any legality the charge had been laid and based on unreliable evidence adduced on the part of P.Ws.1 and 2, the appellant has been convicted by the Trial Court based on such unreliable evidence, which is perverse, particularly, when vital provisions of law including the mandatory provisions have not been complied with by the prosecution nor cared by the Lower Court in its consideration of evidence, that since without properly appreciating the evidence the Lower Court has bluntly passed a convicting judgement, it cannot be sustained or upheld in law. The learned Counsel would submit that the non-compliance of Sections 42(2), 50 and 57 of the N.D.P.S. Act are sufficient to throw the prosecution case on ground but the Trial Court has decided just the contrary and therefore the judgement of the Trial Court passing a convicting judgement is not sustainable in law and would ultimately pray to set aside the conviction and sentence as erroneously passed by the Trial Court allowing the above

appeal in full.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned Counsel for both, what comes to be known is that a case for the commission of offence punishable u/s 20(b)(1) of the N.D.P.S. Act, has been registered and investigated into by P.Ws.1 and 2 in their Cr.No.313/91 and on completion of the investigation, the charge-sheet having been filed, the trial has been conducted by the Lower Court, in which, P.Ws.1 and 2, the Constable and the Sub Inspector of Police of the concerned Police Station are the only witnesses examined with 2 documents marked as Exs.P.1 and P.2, Ex.P.1 being the requisition dated 15.12.1991 to the Forensic Science Lab for examination of the samples of the ganja and Ex.P.2 being the report from the Lab dated 06.07.1992, and the sole M.O.1 is the ganja weighing 100 grams said to have been seized from the appellant/accused on the date of the occurrence.

9. The story of the prosecution is that when P.W.1 the Constable attached to the Pollachi Police Station was going along with two others on a prohibition raid near Pollachi Shandy, near Oil Shops line, they saw the appellant/accused standing with the contraband, ganja, weighing 100 grams without any valid licence or permit and on seeing the raiding party, he started running and the raiding party headed by P.W.1 chased him and caught him and found that he was in possession of the said ganja weighing 100 grams and causing his arrest, brought him to the Police Station and P.W.1 himself registered the case for an offence punishable u/s 20(b)(1) of the N.D.P.S. Act and placed the records for further investigation by the Officers.

10. The further case of the prosecution is that P.W.2, the Sub Inspector of Police, attached to the Pollachi Police Station, took up the investigation and remanded the accused and took the samples and sent for chemical examination and on obtaining Ex.P.2 report, charged the accused for having committed the offence punishable u/s 20(b)(i) of the N.D.P.S. Act.

11. In spite of the position of law being that neither P.W.1 could register the case, nor P.W.2 investigate into the same, particularly against G.O.Ms.No.1437 dated 24.09.1987, whereunder the authority competent to investigate the case under the N.D.P.S. Act is the Deputy Superintendent of Police and further citing that it has been held in the case reported in Rajendran @ Kulla Rajendran vs. State by the Assistant Commissioner of Police, Pulianthope Range (Law and Order), Madras 1993 Cri. LW P.412 wherein a case investigated into even by the Inspector of Police has been held without jurisdiction resulting in the entire proceedings quashed, the Trial Court blabbering something irrelevant and unsuitable to the context of the case has passed a convicting judgement against the appellant. Further without caring for the non-compliance of the other mandatory Sections of the N.D.P.S. Act, such as Sections 50 and 57, the Lower Court has passed the conviction and sentence against the appellant, which in no manner could be justified in law. The reasons for overlooking the legal provisions, particularly, the

mandatory compliance required under Sections 50 and 57 of the N.D.P.S. Act by the Lower Court are totally irrelevant and unacceptable.

12. It is pathetic to note that even in the Code of Criminal Procedure, it has been glaringly stipulated that a case could be registered only by a Police Personnel at the most not less than the rank of the Head Constable and the same has been very well embodied under Sections 41 and 42 of the N.D.P.S. Act also and in spite of all these legal barriers, P.W.1 Constable in this case, would take the law in his hands and would register the case in crime No.313/91 of the Pollachi Police Station and cause the arrest of the accused, etc. Equally, P.W.2 the Sub Inspector of Police, who has also no investigative power to investigate into any case registered under the N.D.P.S. Act, would come forward to depose that he investigated into the matter and laid the charge-sheet, which is nothing but making a mockery of the law and the legal convictions, which have all been ratified by the Lower Court on irrelevant considerations, no mention need be necessary that the appreciation of the evidence as a whole by the Trial Court in the above case is perverse and irregular, which cannot be sustained in law. Needless to point out that the judgement of the Trial Court (the Assistant Sessions Judge, Udumalpet) made in C.C.No.11 of 1993, becomes only liable to be set aside.

13. In result,

(i) the above Criminal Appeal succeeds and the same is allowed;

(ii) the conviction and sentence imposed on the appellant dated 20.09.1996 by the Trial Court in C.C.No.11 of 1993 are set aside;

(iii) the appellant/accused is acquitted of the charges u/s 20(b)(1) of the N.D.P.S. Act, for which he stood charged before the Court of the Assistant Sessions Judge, Udumalpet in C.C.No.11 of 1993;

(iv) the fine amount paid, if any, shall be refunded in favour of the appellant/accused within two weeks from the date of receipt of the copy of this judgment ;and

(v) the bail bond executed by the appellant and the sureties produced shall be cancelled.