

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 19TH DECEMBER 2005 / 28TH AGRAHAYANA 1927

CRL.A.No. 504 of 2000(C)

SC.90/1997 of ADDL.SESIONS COURT, KOZHIKODE
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APPELLANT:

M.P.SIDHIQUE,
CONVICT NO.6930,
CENTRAL PRISON,
KANNUR.

BY ADV. SMT.VALSAMMA KURIAN (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA

BY PUBLIC PROSECUTOR (SMT. TRESA RANI GEORGE)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 19/12/2005, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K. HEMA, J.

Crl. Appeal No.504 of 2000

Dated this 19th day of December, 2005.

JUDGMENT

The appellant was convicted and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.10,000/- and in default to undergo rigorous imprisonment for six months more. Set off was also allowed. The said conviction and sentence were passed under Section 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short) by the Addl. Sessions Judge, Kozhikode. The said conviction and sentence are challenged in this appeal.

2. According to the prosecution, on 4.9.1996 at about 10.30 p.m. the accused was found to be in possession of 50 gram of ganja in 25 small packets kept for sale by PW1, the Sub Inspector, PW2 Police Constable and other police party. PW1 proceeded to the spot on getting reliable information that ganja is being sold at the place of occurrence and on reaching the place of occurrence, which is on the western side of the beach road lying in front of the Fisheries School, they found the accused in a scooter carrying a paper packet on his right hand. On seeing, he was informed that they intend to search his body. After complying with the provisions under Section 50 of the NDPS Act, a search was conducted. A packet containing 50 grams of ganja, in 25 small packets, were seized. The body-search was conducted in the presence of independent witnesses. The articles were seized, sealed and labeled. The signature of witnesses and accused were affixed on label. Accused was arrested on the spot.

3. To prove the prosecution case, PWs 1 to 6 were examined and Exts.P1 to P14 and MOs 1 to 5 were marked. The court below, after analysis of the evidence, found that the accused was found in possession of ganja as alleged by the prosecution.

4. PWs 1 and 2 are official witnesses. PW1 is the Sub Inspector and PW2 is the Police Constable accompanied PW1 to the scene. PW1 and PW2 corroborated each other on all material particulars regarding the search, seizure and arrest. Their evidence will disclose that on 4.9.1996 at about 22.15 hours they got reliable information that a person was selling ganja in front of Fisheries School on a scooter and on reaching there, they found the accused in a perplexed state. The Sub Inspector (PW1) informed about his right under Section 50 of the NDPS Act and thereafter a body search was conducted and packet was seized from his possession. On opening, it contained MO2 series (25 small packets) which were found to be ganja. The scooter was also seized and the accused was arrested.

5. There is nothing in the evidence of PWs 1 and 2 to disbelieve them. Though they are police officials, no motive is alleged against them to foist a false case against the appellant. His case is that he is engaged in fish business. He is falsely implicated. Except a bald assertion, nothing is brought out from the evidence to show that a false case is foisted against him. Both of them stood the test of cross-examination and gave evidence fully supporting the prosecution case. Their evidence is also corroborated by the evidence of PW3 to a certain extent.

6. PW3 is an independent witness who has given evidence that he had seen he accused being surrounded by the police in front of the fisheries school in 1996 in the morning though the date and month are not remembered by him. He also said that he had signed in Ext.P1 mahazar. He also stated that he had signed on the articles seized from the accused and identified the signature on MO1 and MO3. The evidence of PWs 1 to 3, therefore, satisfies that an incident as alleged had taken place and 25 packets of ganja were seized from the

possession of the accused as alleged by the prosecution on the date and time, alleged by the prosecution.

7. The ganja was sent for chemical analysis through the court and it was certified to be pure ganja as per Ext.P9 chemical analyst's report. The contemporaneous document, Ext.P1 seizure mahazar, FIR, Ext.P3, the property list Ext.P6 would all add to the veracity of the version given by these witnesses. The accused was produced within 24 hours before the court. The contraband article was also produced before the court on the very next day of the incident within 24 hours. Thus, there is nothing on record which will cast reasonable doubt on the case set up by the prosecution regarding seizure.

8. Learned counsel appearing for the appellant however submitted that there is no compliance of Section 50 of the NDPS Act in this case. PWs1 and 2 categorically deposed with respect to the details disclosing compliance of Section 50 of the Act. Both of them said that though PW1 told the accused and alerted him on his right to get the search conducted in the presence of gazetted officer or a Magistrate, but the accused had not availed of such opportunity. The evidence of PW3, a hostile witness, would go to show that he had not observed the minute details regarding the seizure etc. and the official formalities. Therefore, in the light of the evidence of PWs 1 and 2, it cannot be said that there is no compliance of Section 50 of NDPS Act.

In the above circumstances, I find that the conviction and sentence passed against the appellant are only sustainable and no interference is called for.

Appeal is dismissed.

K.HEMA, JUDGE.

Krs.

K.HEMA, J.

M.F.A.NO.504 OF 2000

JUDGMENT

19.12.2005