

(2013) 11 KL CK 0083
In the High Court Of Kerala
Case No : Criminal A. No. 348 of 2002

Kuttappan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 11 KL CK 0083

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : Geo Paul, for the Appellant; N. Suresh, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mohanan, J.—The above appeal is directed against the judgment dated 11.04.2002 in S.C. No. 228 of 1999 of the court of IInd Additional Sessions Judge, Palakkad, at the instance of the sole accused in the above Sessions case as he is convicted and sentenced for the offence u/s 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act. The prosecution case is that on 28.12.1998 at 8.45 a.m., the accused was found transporting 1 kg 600 grams of ganja, a narcotic substance in violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act by traveling in a stage carriage bearing Registration No. KL-10B 7470 known by name shogun which was plying through Mannarkkad-Shornur public road and that, therefore, he committed the offence punishable under the above Section of the Narcotic Drugs and Psychotropic Substances Act. Thus according to the prosecution, the accused was convicted for the offence punishable u/s 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act (for short "the N.D.P.S. Act") and on such allegation Crime No. 711 of 1998 was registered in the Mannarkkad police station. On completing investigation, charge was laid in the Sessions Court, Palakkad wherein S.C. No. 228 of 1999 was instituted and the same made over to the present trial court for disposal.

2. When the accused were entered appearance, after hearing the prosecution and the accused, a formal charge was framed against him for the offence punishable u/s 20(b)(1) of the N.D.P.S. Act, which when read over and explained to the accused he denied the charge and pleaded not guilty and, therefore, the trial was continued during which PWs. 1 to 8 were examined and Ext. P1 to P7 were produced. Mos. 1 to 3 were also identified as material objects. The trial court finally found that the accused has committed the offence punishable u/s 20(b)(1) of N.D.P.S. Act and accordingly, he is found guilty and convicted thereunder. On such conviction the accused/appellant is sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 10,000/- and default of payment of fine, he is directed to suffer simple imprisonment for a further period of 6 months. Set off is allowed. It is the above finding and order of conviction and sentence that are challenged in this appeal.

3. Heard Sri. Jeo Paul, the learned counsel for the appellant and Sri. N. Suresh, the learned Public Prosecutor for the State.

4. Learned Public Prosecutor submitted that the appellant had already undergone the sentence and accordingly he is released from the Central Jail, Kannur on 06.08.2004 itself. The learned counsel for the appellant submitted that as the appellant had already undergone imprisonment he has no argument on merit and the same endorsed in the case file. The above submission is also recorded.

5. Even though the submissions are made, as the challenge is against the conviction and sentence, I have perused the evidence and materials on record. On such perusal, it is seen that the Sub Inspector of police Mannarkkad police station received telephonic information during the morning of 28.12.1998 from PW 3, Head Constable attached to Mannarkkad police station. According to PW 3 while he was traveling in Shogun bus, plying through Mannarkkad-Shornur Public road which bearing registration No. KL-10B-7470, for reporting duty to Mannarkkad police station and when the bus reached at Pakkulam, he found the accused sitting at the back seat of the said bus holding a bag which he doubted as containing ganja as he smelled the same. Thus according to the prosecution, on getting such information, PW 1 after informing the matter to Dy. S.P. and entering the matter in General Diary and waited in front of the Mannarkkad police station with his party and when the said bus arrived in front of the Mannarkkad police station, the bus was stopped and the accused was identified and he was brought down and, thereafter, the ganja was searched out in the presence of Divisional Forest Officer, who is a Gazetted Officer and ganja was seized from the bag carried by the accused. The total quantity of the ganja was found as 1.600 kgs and out of this, three samples, each sample containing 50 grams were separated and samples were packed in polythene cover and properly sealed and the residue weighing 1.450 kgs was also separately packed, tied with twine and sealed properly. The label containing the signatures of the accused, PW 1 the detecting officer, PW 4 and PW 5 (Conductor) was also affixed on both packets. The entire proceedings including the seizure sampling etc are

elaborately described in the seizure mahazar, Ext. P1. Thereafter, a crime was registered in the Mannarkkad police station and, thereafter, the accused was produced before the court as well as the contraband articles and also the other material objects were produced. The investigation was undertaken by PW 7, the then DYSP. When PW 1 was examined, he had deposed strictly in terms of the prosecution allegation and he had stated the facts and circumstances under which the ganja was seized from the possession of the accused on 28.12.1998. As I have already narrated the said facts and I am not proposed to repeat the same. Though PW 1 was extensively cross examined nothing brought on record to discredit his version. When PW 1 was examined Ext. P1 Seizure mahazar, Ext. P2 FIR, Ext. P3 arrest memo and Ext. P4 letter etc are proved through PW1. He had also identified 2 samples of 3 ganja packets as MO 1 and residue of the ganja as MO 2. PW 2 is a Police Constable attached to Mannarkkad police station who also attended the search proceedings and seizure of the contraband article from the possession of the accused and when PW 1 examined he had also deposed in tune with the deposition of PW 1. The role of PW 3 I have already mentioned. PW 4 is the then Divisional Forest Officer who is a Gazetted Officer at whose presence the seizure was effected. PW 4 has also deposed that on getting letter from PW 1 requesting him to his presence for search of bag held by a passenger in the above mentioned bus, he reached at police station at about 8.40 am and he had also deposed the procedures adopted by PW 1 towards the search and seizure of ganja from the possession of the accused. He had also admitted his signature on the sample packet and the residue packet and also Ext. P1 seizure mahazar and during trial he had identified MO 2 material objects and Ext. P1 seizure mahazar. PW 5 the conductor of the said bus when examined, he had also deposed in favour of the prosecution and he had also identified MO 1 series, 2 sample packets and residue as MO 2 and also identified MO 3 plastic cover. The evidence of PW 7, the investigating officer shows that the samples were sent for chemical analysis report and thus obtained Ext. P7 chemical analysis report. These are the evidence and materials referred to by the learned judge in support of his finding. On re-appreciation of the evidence and on materials, I am of the view that the learned Judge of the trial court is fully justified in its finding and convicting the appellant especially when no argument is advanced on merit.

In the result, I find no reason to interfere with the finding of the court below and accordingly, this appeal is dismissed confirming the conviction recorded by the trial court against the appellant for the offence u/s 20(b)(1) of the N.D.P.S. Act and the sentence imposed thereunder, as per the judgment dated 11.04.2002 in SC. 228/1999 of the court of IInd Additional Sessions Judge, Palakkad.

Accordingly, the above appeal is dismissed.