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Current Tamil Nadu Cases

2006 (3) CTC

on hand, from Ex.B.7 which has been marked as Ex.A-7 by the appellant himself, it is clear that the Railway Administration has categorically stated that since detention of the goods incurs wharfage charges from 2.2.1988 and they have clearly brought to the notice of the appellant that unclaimed goods will be disposed of under Sections 55 and 56 of the Act. This letter has been issued on 9.8.1998. But the auction shall take place only on 5.12.1988. In spite of the letter dated 9.8.1988, the appellant having failed to take delivery of the goods now the appellant cannot claim damages since a liability has been caused on the appellant to take delivery of the goods under Section 82 of the Act. Having failed to avail that, even if he is not satisfied with the assessment of damages made by the Railways, he cannot claim damages. Having failed to execute the liability which he ought to have done under the Railways Act, now the appellant is estopped from claiming damages. Hence, finding no ground to interfere with the order passed by the Tribunal, this Civil Miscellaneous Appeal is dismissed.

RSN

2006 (3) CTC 444

IN THE HIGH COURT OF MADRAS

K.N. Basha, J.

CrI.O.P. No. 7328 of 2006

22.3.2006

Kanniga

.....*Petitioner*

Vs.

State, rep. by the Inspector of Police, Shankar Nagar
Police Station, Chennai

.....*Respondent*

Code of Criminal Procedure, 1973, Section 42 read with Schedule I, Classification 2 — Bailable Offences — Court competent to try offences arising under N.D.P.S. Act punishable with imprisonment for less than 3 years are bailable — Section 36-A(1)(a) of N.D.P.S. Act read with Section 42 of Code of Criminal Procedure empowers other Magistrates to try offences punishable with imprisonment less than 3 years in accordance with Code of Criminal Procedure — Bail granted. (Paras 4, 7, 11 & 12)

Narcotic Drugs Psychotropic Substances Act, 1985, Section 36-A(1)(a) — Competent Court to try offence punishable for more than 3 years — Categorisation of quantity — Notification SO 1055 (E) dated 19.10.2001 — Amendment Act 9 of 2001 dated 2.10.2001 — Effect — As per

Part 5

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Notification 1 Kg specified as small quantity — 1-20 Kg comes in between small and commercial quantity — Offences arising under N.D.P.S. Act punishable with imprisonment for less than 3 years are bailable one — As per Section 36-A(1)(a) of N.D.P.S. Act comes into force in 2001 — Other Magistrates are empowered to try such offences. (Paras 4, 7 & 11)

CASES REFERRED

Shaji v. Kerala State, 2004 MLJ (Crl.) 1136 10

Mr. T.S. Srinivasan, Advocate for Petitioner.

Mr. P.N. Prakash, Amicus Curiae for Respondent.

Crl.O.P. ALLOWED

ORDER

K.N. Basha, J.

1. The offence alleged against the Petitioner is under Sections 8(c) r/w 20(b)(ii)(A) of N.D.P.S. Act in Crime No.96 of 2006 on the file of the respondent.

2. Learned counsel for the Petitioner submits that the Petitioner has been arrested by the respondent police on 3.2.2006. The allegation against the Petitioner is that the Petitioner was found in possession of 24 gms of Ganja. It is also submitted by the learned counsel for the Petitioner that the Petitioner is a lady and she is a house wife and she has to take care of her children.

3. It is further submitted by the learned counsel for the Petitioner that she has moved an Application for bail in Crl.M.P. No. 2012 of 2006 before the learned Judicial Magistrate, Tambaram and the same was dismissed on 23.2.2006 on merits. Thereafter, the Petitioner moved bail before the Principal District and Sessions Judge, Chengalpet and the same was dismissed on 9.3.2006 on the ground that the Petition is not maintainable since he was not empowered to entertain the Bail Application for the offence under N.D.P.S. Act. Therefore, the Petitioner has now come forward with this Petition for bail.

4. Mr. P.N. Prakash, learned Special Public Prosecutor has been appointed as *amicus curiae* and he submits that as per the allegation the quantity said to have been possessed by the Petitioner comes within the category of 'small quantity' as per the Notification SO 1055 (E) dated 19.10.2001 issued by the Government of India, wherein it is specified that 1 Kg comes under the small quantity and 1-20Kg comes in between small and commercial quantity in respect of the contraband scheduled as Item 55.

5. Mr. P.N. Prakash, learned Special Public Prosecutor has also pointed out before this Court the provision under Section 36-A(1)(a) of N.D.P.S. Act. Section 36-A(1)(a) reads as follows:

36-A: Offences triable by Special Courts.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

6. Therefore, the learned Special Public Prosecutor submits that under the above said provision, the Special Court constituted for the purpose of trying cases under the N.D.P.S. Act is empowered to try those offences under the N.D.P.S. Act, which are punishable with imprisonment for a term of more than three years. It is further submitted that the offence punishable with imprisonment of less than three years can be tried as per Classification II, Schedule I r/w Section 4 of Cr.P.C.

7. The case concerned in respect of this Petition comes under third item of Schedule II of Cr.P.C. It is further submitted by the learned Special Public Prosecutor that there is absolutely no ambiguity as per the provision under Section 36-A(1)(a) of the N.D.P.S. Act r/w 4(2) of Cr.P.C. Schedule I, Classification 2 of Cr.P.C. empowers the Courts as specified in the Cr.P.C. to try the cases which are punishable with imprisonment for less than three years. It is also pointed by the learned Special Public Prosecutor that all the Courts in this State were under the impression that any offence under N.D.P.S. Act should be tried only by the Special Judge constituted exclusively for the offence falling under N.D.P.S. Act. Learned Special Public Prosecutor also pointed out that unfortunately the lower Courts have not considered the provision under Section 36-A(1)(a) of the N.D.P.S. Act which empowers other Magistrates as per the provisions stated above under the Cr.P.C. to try the offences which are punishable with imprisonment less than three years for the offence alleged under the N.D.P.S. Act. It is also brought to my notice by the learned Special Public Prosecutor that the above said provision has been made in the N.D.P.S. Act by Amendment Act 9/2001 dated 2.10.2001. It is also submitted by learned Special Public Prosecutor that the Courts below have not given effect to the above said provision under Section 36-A(1)(a) of N.D.P.S. Act and as a result, the Special Court for N.D.P.S. Cases is flooded with number of applications as well as number of cases resulting in delay in proceedings and ultimately both the litigants as well as the officials concerned are subject to unnecessary problems and hardships.

8. Learned Special Public Prosecutor further fairly stated that the offences which are punishable with imprisonment less than three years are bailable offences and the persons who have been alleged in respect of those offences are entitled for bail.

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Mr. M.K. Subramanian, learned Government Advocate
submitted that the investigation is over in this case.

Prakash, learned Special Public Prosecutor also brought to
attention of a Division Bench of the Kerala High Court in
State, 2004 MLJ (Cri.) 1136, wherein the Division Bench
referred to the provision under Section 36-A(1)(a) of N.D.P.S. Act and
held as follows:

“Based on our finding that the quantity involved in these cases is larger
than small quantity, we will now answer the reference and we do so as
follows:

(1) Going by Section 36 of the Act, all offences under the Act,
punishable with imprisonment for a period of more than three years
shall be triable only by the Special Court. An offence under the Act,
involving small quantity, is punishable as per Section 20(c) with
rigorous imprisonment for a term which may extend upto six months
only. The last entry in Part II of the First Schedule to the Code of
Criminal Procedure, 1973, provides that offences under laws other
than Indian Penal Code, punishable with imprisonment for less than
three years or with fine shall be ‘Non-cognizable’ and ‘Bailable’ to
be tried by ‘Any Magistrate’. The offence under the Act is made
triable by a Special Court, in terms of Section 36-A(1)(a) of the Act,
if it is ‘punishable with imprisonment for a term of more than three
years’. Of course, all offences under the Act are cognizable going by
Section 37(1)(a) of the Act. Except to the extent, for trial of the
offences, the provisions in the Code of Criminal Procedure, 1983,
shall be applied going by Section 4(2) of that Code. So, the offences
under the Act which are punishable with imprisonment for a term
not exceeding three years, are bailable offences.

(2) When an offence is one to be tried by a Special Court, being one
which may attract imprisonment for more than three years, the
Magistrate cannot have any jurisdiction to touch it other than on the
first occasion, to remand the accused forward to him for a period not
exceeding fifteen days in the case of Judicial Magistrate or seven days
in the case of Executive Magistrate. It need not be at one stretch; but
‘in the whole’. He cannot remand a person for more than the aforesaid
period. During the ‘period of detention authorised’ by him or on its
expiry, he has to make over the case to the Special Court having
jurisdiction to try the case. Therefore, there arises no question of
extension of the remand period beyond fifteen days or seven days, as
the case may be, by a Magistrate in a case charged under the Act
triable by the Special Court. But, in a case involving an offence
charged under the Act, punishable with imprisonment for a period of
less than three years, necessarily, going by Section 4(2), CrI.P.C. and
the Schedule to the Code of Criminal Procedure, 1973, the Magistrate
can deal with it as if it is a case relating to a bailable offence. In such
cases also, there arises no question of extension of remand period as
posed in question No. 2.

Going by the proviso to Section 36-A(1)(b) of the Act, even if the Magistrate considers that detention of the accused person is unnecessary either when he is forwarded to him or upon or at any time before the expiry of the period of detention authorised by him, he shall order such person to be forwarded to the Special Court having jurisdiction. Therefore, in cases involving offences punishable with imprisonment for a term exceeding three years, triable by a Special Court, the Magistrate is not competent to release such accused.”

11. The position of law as laid down by a Division Bench of the Kerala High Court in the decision, as stated supra makes it crystal clear that the offences arising under the N.D.P.S. Act punishable with imprisonment for less than three years are bailable one. As stated above, the provision under Section 36-A(1)(a) of N.D.P.S. Act is unambiguous. Under the said provision, the Special Court is empowered to try only the offences which are punishable with imprisonment for a term of more than three years. Unfortunately, the said provision went unnoticed by the Courts below and as a result, there is a flood of cases before the Special Court, resulting in delay in the disposal of the cases including the bail applications. The above said provision under Section 36-A(1)(a) of N.D.P.S. Act came into force in the year 2001 as per the Amendment Act 9/2001 dated 2.10.2001. It is needless to say that justice delayed is justice denied. Therefore, the Magistrate Courts and the District Courts should give effect to the provisions under Section 36-A(1)(a) of N.D.P.S. Act r/w 4(2) of Cr.P.C. Schedule I, Classification 2 of Cr.P.C. In letter and spirit.

12. In view of the above position of law and also In view of the fact that the offence alleged against the Petitioner is a bailable one, I am inclined to grant bail to the Petitioner. Accordingly, the Petitioner is directed to be released, on bail on her executing a bond for a sum of Rs.10,000 (Rupees Ten Thousand only) together with two sureties each for a like sum to the satisfaction of Judicial Magistrate, Tambaram and on further condition that the Petitioner shall report before the respondent police as and when required for interrogation.

13. Before parting with this matter, this Court must place on record the commendable services rendered by Mr. P.N. Prakash, learned Special Public Prosecutor, who appeared in this matter as *amicus curiae*.

VA
