

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G. BASAVARAJA

CRIMINAL APPEAL NO.816 OF 2013
C/W CRIMINAL APPEAL NO.877 OF 2013 &
CRIMINAL APPEAL NO.315 OF 2014

CRL.A NO.816 of 2013

BETWEEN

SRI G. MARUTI
S/O LATE SINGAIAH
AGED ABOUT 72 YEARS
R/O NIMBOLI ADDA
NEAR KACHIGUDA KUMAR TALKIES
KACHIGUDA, HYDERABAD CITY
ANDHRA PRADESH STATE 500 027

...APPELLANT

(BY SRI AMAR CORREA, ADVOCATE)

AND

STATE OF KARNATAKA
BY MADIKERI RURAL POLICE STATIONI
MADIKERI
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE – 560 001

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CRPC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 31.07.2013 PASSED BY THE S.J., KODAGU, MADIKERI IN SPL. CASE (NDPS) NO.4/2007 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S/ 8(c) AND 20(b)(ii)(C) OF NDPS ACT.

CRL.A. NO.877 of 2013

BETWEEN

SRI DEVENDRA
S/O MALLAIAH @ AIYLAYYA
AGED ABOUT 33 YEARS
R/O METUPALLI VILLAGE
SHANKARA PATTANAM MANDALA
KAREEM NAGAR DISTRICT
ANDHRA PRADESH STATE 505 001

...APPELLANT

(BY SRI AMAR CORREA, ADVOCATE)

AND

STATE OF KARNATAKA
BY MADIKERI RURAL POLICE STATIONI
MADIKERI
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
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CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE
P/U/S/ 8(c) AND 20(b)(ii)(C) OF NDPS ACT.

CRL.A. NO.315 of 2014

BETWEEN

SRI N RAJIAH @ RAJU
S/O SARAIAH
AGED ABOUT 31 YEARS
DRIVER, DOOR NO.4-106
SINGAPURA VILLAGE
HUJIRABAD MANDALA
KAREEM NAGAR DISTRICT
ANDHRA PRADESH
(NOW IN JUDICIAL CUSTODY)

...APPELLANT

(BY SRI RAJASHEKAR K. &
SRI B. RAVINDRA, ADVOCATES)

AND

STATE OF KARNATAKA
BY MADIKERI RURAL POLICE STATION
MADIKERI
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560 001

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
374(2) OF CRPC PRAYING TO SET ASIDE THE JUDGMENT
AND ORDER DATED 31.07.2013 PASSED BY THE S.J.,
KODAGU, MADIKERI IN SPL. CASE (NDPS) NO.4/2007

CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S/ 8(c) AND 20(b)(ii)(C) OF NDPS ACT.

IN THESE CRIMINAL APPEALS ARGUMENTS BEING HEARD, RESERVED FOR JUDGMENT ON 16.02.2026, COMING ON "PRONOUNCEMENT OF ORDERS", THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G. BASAVARAJA

CAV JUDGMENT

1. All these appeals arise out of the judgment passed in Spl. Case (NDPS) No.4 of 2007 dated 31st July, 2013 by the District and Sessions Judge, Kodagu, Madikeri.
2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.
3. The brief facts leading to this appeal are that the Sub-Inspector of Police, Madikeri Rural Police Station has submitted the charge-sheet against the accused Nos.1 to 3 for the offence punishable under Sections 8(c), 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 34 of Indian Penal Code. The case against

accused No.4 was split up as he was absconding and a separate case was registered in Spl. Case (NDPS) No.11 of 2007.

4. It is alleged by the prosecution that on 26th November, 2006, CW1-P.P.Raghavaiah, working as a Head Constable in Madikeri Rural Police Station, CW6-Rajesh B.K, Constable in that station and a Forest Guard by name K.A Ramesh shown as CW5 in the charge-sheet, working in Sampaje Forest Range, were entrusted with the task of checking vehicles near Sampaje Check-post within the limits of Sampaje Forest Range. Around 12.30 p.m., when they were near the check-post, a Toyota lorry bearing Registration No.AP-09/T-0575 came from the side of Madikeri. The driver of the lorry was asked to stop the vehicle. Accordingly, it was stopped. The driver and another person who was on the left side of the lorry tried to run away. Immediately they were caught hold of. They

disclosed their name as Rajaiah and G.Devendra. One more person who was in the lorry attempting to run, was also caught. He also disclosed his name as Maruthi. When interrogated, they stated that they had come from Kachiguda of Andhra Pradesh. When the lorry was checked, they found four plastic bags which were half filled with cannabis leaves. In the body of the lorry a box-like thing had been formed. In that, there were 11 plastic bags containing cannabis leaves. When questioned the accused stated that they had no license to transfer the same. Therefore, the vehicle and the contraband were seized. The accused was taken to the outpost police station attached to Madikeri Rural Police Station. Thereafter, CW1 went to Madikeri Rural Police station and gave complaint. Based on that, case was registered in Crime No.175 of 2006. Investigation was taken over by CW16 the PSI of that Station. They recorded the voluntary statement of accused Nos.1 to 3. They disclosed that accused No.4 had given

them the ganja leaves for being transported from Warangal of Andhra Pradesh to Mangalore. Thus the involvement of the accused No.4 came to be known. A sample of what was seized was sent for chemical analysis and it was confirmed that it was cannabis. Thereafter, charge-sheet was filed against all the four accused in crime number. Accused were enlarged on bail.

5. Upon hearing on charges, the trial Court has framed charges for the offences punishable under Sections 8(c) and 20(b) of NDPS Act, 1985 and the same was read over and explained to the accused in the language known to them i.e., Telugu language. Having understood the same, Accused Nos.1 to 3 have pleaded not guilty and claimed to be tried.

6. To prove the case of prosecution, in all, nine witnesses were examined as PWs1 to 9 and nine documents were marked as Exhibits P1 to P9 and two Material Objects

were marked as MOs.1 and 2. On closure of prosecution side evidence, statements of the accused under Section 313 of Code of Criminal Procedure were recorded. The accused have totally denied the evidence of prosecution witness. However, they have not chosen to lead any defence evidence on their behalf.

7. Having heard the arguments on both sides, the trial Court has convicted the accused for the offences punishable under Section 8(c), 20(b)(iii)(C) of the NDPS Act. Being aggrieved by the judgment of conviction and order on sentence the appellants/accused have preferred this appeal.

8. Learned counsel for the appellant would submit that the judgment of conviction passed by the trial Court is without appreciation of facts, borne out from records to the law in force pertaining to the offence under the NDPS Act and hence same has resulted in miscarriage of justice.

9. PW1-Medical officer examined as the Gazetted Officer affixing seizure, deposes in his examination-in-chief that the police told him that they will neatly write the panchanama later and bring it in the evening for signature of this witness and this witness has been treated as hostile by the prosecution. Even the suggestion put by the Public Prosecutor that police had drawn the panchanama at Sampaje Forest Check Post and signatures of witnesses were taken, is denied by this witness. This witness has categorically admitted that Exhibit P2-Panchanama was signed him in his quarters. This evidence totally demolishes the case of the prosecution with respect to the primary and most vital evidence in the case, which is alleged seizure of the contraband as per Exhibit P2.

10. PW1-the seizing Gazetted Officer further deposed that he did not examine the box like things in the vehicle and that the plastic bags were all open when he saw them. This evidence further establishes the fact that there is no seizure

made from the possession of any accused and moreover the alleged plastic bags were in an open stage. PW1 deposed that in his presence the alleged contraband was not seized nor were any photographs taken in his presence.

11. PW2 being first informant and one among the raiding team, deposes that after discovering contraband in truck and after apprehending accused 1 to 3, he left the truck and at Sampaje check post entrusting CW6 to guard and he proceeded to Madikeri. This again renders the alleged seizure and apprehension untrustworthy. This also dispels the fact of any alleged seizure from these accused and also for the reason that Exhibit P3 complaint does not speak of CW6 being asked to stay back at Sampaje to guard the vehicle and the accused. In addition, the evidence of this witness about the seizure is also not trustworthy for the reason that he states that he travelled back to Sampaje from Madikeri by bus. But PW9, the Investigating Officer

and Sub-Inspector of Police, states that this witness along with him and PW1 travelled together to Sampaje by jeep.

12. Two independent panchas examined as PW7 and PW8 have turned hostile to the case of the prosecution. Their evidence does not corroborate each other and are doubtful about the seizure of contraband as also the arrest of the accused.

13. The trial judge has wrongfully appreciated that there has been seizure from the vehicle in which the accused were travelling and accused have failed to explain as to contraband in their possession. This is an incorrect appreciation of evidence on record. There is failure on behalf of the prosecution to prove possession against the accused. Hence, the presumption cannot be drawn. The trial judge has failed to appreciate the written-statements submitted under Section 313 of CrPC; there was no possession proved as against the accused. Hence, the

explanation given by these accused were most probable in the given circumstances. The Investigating Officer has not complied with the mandatory provisions of Section 52A of NDPS Act. On all these grounds he sought to allow the appeals.

14. As against this, Smt. Anitha N. Girish, the learned HCGP appearing for the respondent-State, would submit that the trial Court has properly appreciated the evidence on record and passed the impugned judgment of conviction and sentence and there is no ground for interference by this Court in these appeals. Hence, she sought for dismissal of appeals.

15. Having heard the arguments on both sides and on perusal of materials, the following points would arise for my consideration:

- 1) Whether the trial Court is justified in convicting the accused for the offence

intersection 8(c) and section 20(b) of NDPS Act?

2) What order?

16. My answer to the above points are:

Point No.1: in the negative;

Point No.2: As per final order.

Regarding Point No.1:

17. I have carefully examined the materials placed before this Court. It is the case of the prosecution that on 26th November, 2006 at about 12:30 pm at Sampaje Village within the limits of Madikeri Rural Police Station near the Forest Check-Post, accused 1 to 3 were found in illegal transportation of Ganja weighing 106 kgs. in a DCM Toyota vehicle bearing registration No.AP-09/T-0575 which was supplied by accused No.4 and the accused were in illegal possession of narcotic drugs without any valid license or permit from the competent Authority. Thereby, accused

committed offence, under Section 80(c) and 20(1)(b) of NDPS Act.

18. To prove the case of the prosecution, in all, nine witnesses were examined as PWs1 to 9 and nine documents were marked as Exhibits P1 to P9 and two material objects were marked as MOs1 and 2.

19. CW1-P.P. Raghavayya, Assistant Sub-Inspector of Police examined as PW2. He has stated that from 2003 to 2009 he was working as Head Constable in Madikeri Rural Police Station and that Sampaje Outpost was attached to the Madikeri Rural Police Station. In the year 2006, he was working in that Outpost. On 26th November 2006, CW1-K.A. Ramesh, examined as PW6 and CW6-BK Rajesh were checking vehicles near Sampaje check Post. Around 12:30 pm a Toyota vehicle bearing registration No.AP-09/T-0575 came from the side of Madikeri and the same was stopped. When it was being checked, its driver and other person who was sitting on the left side, got down and started to run.

PW6 and CW6 went after them. By then, another person who was in the Lorry, got down and when he was trying to escape, he caught hold of him. The person who was caught hold was accused No.3. The remaining two persons who were caught hold by PW6 and CW6 were accused 1 and 2. He has further deposed that in the lorry, there was dry grass and when it was removed, he found four plastic bags containing cannabis leaves. There was a box like thing that had been set up in the body of the lorry, and when it was opened, he found eleven plastic bags containing cannabis leaves. The accused, when questioned, stated that they had no permit to transport the same and that they were transporting it from Andhra Pradesh to Mangalore. He has further deposed that the vehicle and the property were left at the Check-Post and accused were taken to the Outpost. Then he proceeded to Madikeri Rural Police Station and gave complaint as per Exhibit P3. He has further deposed that he gave complaint to CW16-Sub Inspector who is

examined as PW9. PW9 came to the spot and secured CW3 and 4 i.e. PW3 and 4 as Panchas and PW1 Doctor a Gazetted Officer. There, the mahazar as per exhibit P2, was drawn. The cannabis leaves which were in the bags were seized. For the purpose of sending to the chemical analysis, a portion was taken out as sample and packed separately. He has also given the details regarding packing and sealing. Further he has deposited that in the lorry, there was a document pertaining to it, which was marked as Exhibit P4.

20. PW1-Dr.B.N. Harish, Medical officer, has deposed that on 26th November 2006 at 2.00 pm, when he was in his residential Quarters, the Sub-Inspector of Madikeri Rural Police Station, went there and told him that he should accompany him to Sampaje and that he had taken necessary permission from the District Surgeon. He has further deposed that around 4.00 pm in the police vehicle, he went to Sampaje along with Inspector and other staff.

He has also deposited that before going to Sampaje, they went to the police station and in the station, there were three persons who were shown and upon enquiry, they disclosed their names and addresses. He also searched for his person first before enquiring those persons. Then the police took him near the tempo which had been parked in the premises of Police Station, where he found plastic bags. He has deposed that the police told him that the plastic bags contained Ganja, but he has stated that he did not know till then what Ganja was. He has also stated that in the police station, he saw 3 persons and he did not know the language of those persons. He has also stated that a sample of Ganja was taken out from those bags and it was separately packed and sealed. He has identified the vehicle in the photographs Exhibit P1(a) and P1(d).

21. PWs3 and 4 are CWs3 and 4. PW3 has stated that at the relevant point of time, he was working as a temporary employee in APMC and on that day at around 12 noon, a

Toyota Lorry came from the side of Mysore and was proceeding towards Mangalore and its registration number was '0673'. Then he deposed that the officials of the Police Department stopped that Lorry in which there were three persons. The officials made them to get down from the lorry. Thereafter, the lorry was checked and in the Lorry, there were plastic and gunny bags. He has stated that there was a plastic bag in which there were gunny bags and in the gunny bags there were dry leaves and he does not know what those leaves were. He has identified MOs1 and 2 and he has stated that they were the leaves found in the Lorry. Then he has stated that there were 50 bags in the Lorry. He has identified accused 1 and 2. On that day, accused No.3 had not come and he has stated that he would be able to identify the third accused also. Therefore, his further examination was deferred. On 13th March 2013, he was again recalled for further examination and on that day the accused No.3 had also come. He, however, stated

that the accused No.3 was not one of the three persons whom he saw the other day and at that place. He has deposed that accused 1 and 2 were taken to Madikeri by police, but he did not go to Madikeri. He has also deposed that his signature was taken to the mahazar Exhibit P2 near the Check Post and since the police told him that the Lorry was seized, he signed Exhibit P2.

22. PW3 has been treated hostile by the prosecution and has been cross-examined. In the cross-examination, he has admitted that he and PW4 were secured as Panchas. He admitted that PW2 was present at that place, but has stated that he did not see PW1. He has admitted that PW2 showed the persons who were in the Lorry and also the property which was there. He has however, denied as to showing of three accused persons but stated that only accused 1 and 2 were shown. He has also stated that he does not remember those persons.

23. PW4-B.T. Ramananda has not fully supported the case of prosecution.

24. PW5-B. Lingappa, Assistant Chemical Analyst, has deposed that on 1st December 2006, a sealed packet pertaining to the case was sent by Madikeri rural Police and on 14th December 2006, he has examined the same and found that it contained ganja leaves. He has stated that the conducted physical examination which disclosed cystolithic hairs of ganja and also chemical examination i.e. beans alkaline test, which turned out to be positive. He has also deposed as to issuance of Exhibit P6-certificate as to chemical analysis.

25. PW7-M.L. Vijaya, Driver and PW8-K.B. Karumbaiah, who are the independent witnesses have not supported the case of prosecution.

26. PW9-K.P. Harishchandra, Sub-Inspector of Police, has deposed as to the investigation conducted by him.

27. On careful examination of the entire evidence placed before this court, it makes clear that PW1-Dr B.N. Harish, Retired Medical Officer has not fully supported the case of prosecution. He has specifically stated in his evidence that he has put signature on the mahazar Exhibit P2 in his Quarters. He has not put signature on the spot. Further, in the cross-examination, he has clearly admitted that he has not verified the box which was found in the vehicle. He has further stated that the police have not weighed the properties before him. Further, he has deposed that when police informed him that they have seized ganja, then only he came to know regarding the Ganja said to have been seized by the Police. This evidence of PW1 totally demolishes the case of the prosecution with respect to alleged seizure of contraband under mahazar Exhibit P2. Further, the mahazar witnesses have also not fully supported the case of the prosecution. Two independent

witnesses PW7 and 8 have not supported the case of the prosecution.

28. This Court has called for the report as to the seizure of lorry bearing registration No.AP-09/T-0575. The Police Inspector Rural Police Station, Madikeri has submitted the report stating that they have seized 106 kgs of dried Ganja in Lorry No.AP-09/T-0575. They have also seized the RC book and permit. Further, he has stated that in the report the investigating officer-Harishchandra, Police Sub-Inspector has not shown the owner of the Lorry bearing number AP-09/T-0575 as accused or as a witness. Exhibit P9 is the Goods Carrier Permit for Lorry bearing registration No. AP-09/T-0575, which reveals that name of the owner as Mir Maozam Ali s/o Mir Ghulam Mohammad Ali. The RC book is also produced, which reveals the name of the registered owner as Mir Maozam Ali s/o Ghulam Ali and the address is shown as 6-2-837, Meerbagh Colony, Nalgonda, Andhra Pradesh. The investigating officer has not enquired

with or communicated the same to the owner of the Lorry. The investigating officer has not assigned any reason for non-mentioning the name of the owner of the Lorry bearing registration No.AP-09/T-0575. The investigating officer has not disclosed as to who was the driver of the Lorry at the relevant point of Time. The investigating officer has also not taken any steps to ascertain as to who was the driver of the Lorry at the relevant point of time.

29. Accused No.1-N Rajaiah, in 313 statement has stated as under:

"ಆ ದಿನ ನಾನು ಹೈದರಾಬಾದ್ ನಿಂದ ಮೈಸೂರಿಗೆ ರೈಲಿನಲ್ಲಿ ಬಂದ 2ನೇ ಆರೋಪಿಯ ತಾಯಿ ಮಂಗಳೂರಿನಲ್ಲಿ ಕ್ಯಾನ್ಸರ್ ಚಿಕಿತ್ಸೆಗಾಗಿ ಚಿಕಿತ್ಸೆ ಪಡೆಯುತ್ತಿದ್ದರು ಅವರನ್ನು ನೋಡಲು ನಾನು ಮತ್ತು 2ನೇ ಆರೋಪಿ ಮಂಗಳೂರಿಗೆ ತೆರಳಿದ್ದೆವು. ಮೈಸೂರಿನಿಂದ ಕುಶಾಲನಗರಕ್ಕೆ ಬಂದು ಕುಶಾಲನಗರದಿಂದ ಮಂಗಳೂರಿಗೆ ಹೋಗಲು ಕುಶಾಲನಗರದ ಬಸ್ ನಿಲ್ದಾಣದಲ್ಲಿ ಕಾಯುತ್ತಿದ್ದೆವು. ಆ ವೇಳೆಗೆ ಈ ವಾಹನ ಬಂದಿದ್ದು ಅದರ ಚಾಲಕ ಮಂಗಳೂರಿಗೆ ಹೋಗುತ್ತಿರುವುದಾಗಿ ಹೇಳಿದ ಮೇರೆಗೆ ನಾವಿಬ್ಬರೂ ಸಹ ಅದೇ ವಾಹನದಲ್ಲಿ ಹೊರಟೆವು. ಮಾರ್ಗದಲ್ಲಿ ಪೊಲೀಸರು ತಪಾಸಣೆ ಮಾಡಿದರು ಚಾಲಕ ಓಡಿಹೋದ ನಮ್ಮಿಬ್ಬರನ್ನು ಪೊಲೀಸರು ಹಿಡಿದುಕೊಂಡರು."

30. Accused No.2-Devendra, has stated in his statement section 313 of CRPC as under:

“ಆ ದಿನ ನಾನು ಹೈದರಾಬಾದ್ ನಿಂದ ಮೈಸೂರಿಗೆ ರೈಲಿನಲ್ಲಿ ಬಂದೆ. ನನ್ನ ತಾಯಿ ಮಂಗಳೂರಿನಲ್ಲಿ ಕ್ಯಾನ್ಸರ್ ಗಾಗಿ ಚಿಕಿತ್ಸೆ ಪಡೆಯುತ್ತಿದ್ದರು. ಅವರನ್ನು ನೋಡಲು ನಾನು ಮತ್ತು 1ನೇ ಆರೋಪಿ, ಮಂಗಳೂರಿಗೆ ತೆರಳಿದ್ದೆವು. ಮೈಸೂರಿನಿಂದ ಕುಶಾಲನಗರಕ್ಕೆ ಬಂದು ಕುಶಾಲನಗರದಿಂದ ಮಂಗಳೂರಿಗೆ ಹೋಗಲು ಕುಶಾಲನಗರದ ಬಸ್ ನಿಲ್ದಾಣದಲ್ಲಿ ಕಾಯುತ್ತಿದ್ದೆವು. ಆ ವೇಳೆಗೆ ಈ ವಾಹನ ಬಂದಿದ್ದು ಅದರ ಚಾಲಕ ಮಂಗಳೂರಿಗೆ ಹೋಗುತ್ತಿರುವುದಾಗಿ ಹೇಳಿದ ಮೇರೆಗೆ ನಾವಿಬ್ಬರು ಸಹ ಅದೇ ವಾಹನದಲ್ಲಿ ಹೊರಟೆವು. ಮಾರ್ಗದಲ್ಲಿ ಪೊಲೀಸರು ತಪಾಸಣೆ ಮಾಡಿದರು. ಚಾಲಕ ಓಡಿ ಹೋದ ನಮ್ಮಿಬ್ಬರನ್ನು ಪೊಲೀಸರು ಹಿಡಿದುಕೊಂಡರು.”

31. Accused No.3-G Maruti, has stated in his statement intersection 313 as under:

“ಆ ದಿನ ನಾನು ಆಂಧ್ರಪ್ರದೇಶದ ಹಿಂದೂಪುರದಿಂದ ಸುಳ್ಯದ ಕೆವಿಜಿ ವೈದ್ಯಕೀಯ ಕಾಲೇಜಿನಲ್ಲಿ ವ್ಯಾಸಂಗ ಮಾಡುತ್ತಿದ್ದ ನನ್ನ ಮೊಮ್ಮಗನಿಗೆ ಮನೆಯಿಂದ ತಿಂಡಿಯನ್ನು ತೆಗೆದುಕೊಂಡು ಕೊಡಲು ಮೇಲೆ ಹೇಳಿದ ವಾಹನದಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದೆ. ಮಾರ್ಗದಲ್ಲಿ 1 ಮತ್ತು 2ನೇ ಆರೋಪಿಗಳೂ ಸಹ ಹತ್ತಿಕೊಂಡರು. ಮುಂದೆ ಹೋಗುತ್ತಿದ್ದಾಗ ಪೊಲೀಸರು ತಪಾಸಣೆ ಮಾಡಿದರು ಚಾಲಕ ಓಡಿ ಹೋದ ನಮ್ಮನ್ನು ಪೊಲೀಸರು ಹಿಡಿದುಕೊಂಡರು.”

32. The evidence of PW2 reveals that the driver of the lorry got down from the Lorry and fled. The statement given by the accused while recording statement Section 313 of CRPC shows that explanation given by these accused are most probable in the circumstance for the reason that the investigating officer has failed to investigate the owners as also the driver of the Lorry. This statement of the accused will create doubt that whether they were travelling as passengers in the lorry or were fully aware that they were transporting Ganja in the said Lorry. On which capacity that accused were travelling in the Lorry has not been disclosed by the prosecution. None of the prosecution witnesses have deposed against these accused that these accused were transporting the alleged Ganja in the said lorry. In the absence of these material piece of evidence, it is more difficult to come to the conclusion that the accused have committed the alleged offence. The investigating officer

has not complied with the mandatory provisions of Section 100(7) of CrPC and also Sections 50 and 52A of NDPS Act.

33. Viewed from any angle, I do not find any cogent, convincing or corroborative legal evidence to prove that the accused have committed the alleged offence. The trial court has not properly appreciated the material on record and convicted the accused which is not sustainable under law. Accordingly, I answer Point No.1 in the negative.

Regarding Point No.2:

34. For the reasons aforesaid and discussions, I proceed to pass the following:

ORDER

- i) Appeals are allowed;
- ii) Judgment of conviction and order on sentence dated 31st July, 2013, passed in Special Case (NDPS) No.4 of 2007 by the

Sessions Judge, Kodagu at Madikeri, is set aside;

- iii) Appellants/Accused 1 to 3 are acquitted of the offence punishable under Section 8(c) and 20(b)(ii)(C) of NDPS Act;
- iv) Trial Court is directed to return the fine amount if any deposited by the accused upon proper identification.

Registry is directed to send the trial Court records along with the copy of this judgment to the concerned Court.

**Sd/-
(G. BASVARAJA)
JUDGE**

Inn