



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 821 OF 2015 (C)

BETWEEN:

1. SRI UMESHA
S/O VEERABHADRAIAH,
AGED ABOUT 29 YEARS,
R/O AREKERE VILLAGE,
JAVAGAL HOBLI,
ARASIKERE TALUK,
HASSAN DISTRICT 56.

...APPELLANT

(BY SRI. PRATHEEP K C., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY BANAVARA POLICE STATION
REP BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE 01.

...RESPONDENT

(BY SRI. M.DIWAKAR MADDUR, HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PLEADED TO SET ASIDE THE JUDGMENT DATED 30.6.2015 PASSED BY THE PRL. S.J. AND SPL. JUDGE, HASSAN IN SPL. CASE (NDPS) NO.71/2009 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 20(b) OF N.D.P.S. ACT, 1985 AND ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 30.06.2015 passed in Spl.Case(NDPS)No.71/2009 by the Principal Sessions Judge and Special Judge, Hassan (for short 'the trial Court').

2. For the sake of convenience the parties herein are referred to as per their rank before the trial Court.

3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Rural Circle, Arasikere, laid a charge-sheet against the accused for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 (hereinafter referred as 'the NDPS Act').

4. It is alleged by the prosecution that, on 17.07.2009 at about 05.30 p.m. in the house of accused at Arekere Village, the accused was found in possession of 3 kgs 850 grams of ganja for the purpose of sale in



contravention of the provisions of the NDPS Act. Thus, the accused has committed the offence punishable under Section 20(b) of NDPS Act, 1985.

5. After investigation, the Investigating Officer has submitted the charge sheet against the accused for the offence under Section 20(b) of NDPS Act, 1985.

6. The accused was enlarged on bail and after filing the charge sheet, case was registered in a Special Case No. 71/2009. On hearing the charges, trial Court has framed the charges for the commission of alleged offence under Section 20(b) of NDPS Act, 1985. Same were read over and explained to the accused. Having understood the same accused pleaded not guilty and claimed to be tried.

7. To prove the guilt of the accused, in all Ten witnesses were examined as PWs.1 to 10. Ten documents were marked as Exhibits P1 to P10 and three material objects were marked as MO Nos.1 to 3.

8. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. The



accused has totally denied the evidence of prosecution witnesses. However, he did not choose to lead any defence evidence on the his behalf.

9. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence on Section 20(b) of NDPS Act, 1985 and sentenced to undergo Rigorous Imprisonment for a period 5 years and to pay a fine of Rs.25,000/-. Being aggrieved by the impugned judgment of conviction and order on sentence, the appellant has preferred this appeal.

10. The learned counsel for the appellant would submit that the impugned order passed by the trial Court is not sustainable either in law or on facts. The trial Court has completely failed to appreciate the case of the appellant. The trial Court has failed to observe the dictum of this Court in ***K.K. REJJI AND OTHERS v. STATE OF MURUDESHWAR POLICE STATION***, wherein it is held that stems, leaves and branches cannot be termed as "ganja" in view of the definition of "ganja" in NDPS Act.



11. The Investigating Officer has not separated fruiting tops or flowering from the ganja plants from weighing. What has been done is that they have weighed entire plants to record the weight. In that context, the evidence produced to substantiate the charge is totally vague. If the whole plant is seized then it will only be a cannabis plant and not ganja.

12. The Special Court would get jurisdiction to decide a case only if the quantity exceeds 1000 grams i.e., small quantity and punishment prescribed is more than 3 years. If the punishment prescribed is upto 6 months or with fine, then the Special Court gets no Jurisdiction and trial has to be by the Magistrate under Cr.P.C. In other words, the Court held that the evidence was not sufficient to know whether the quantity of ganja seized is small quantity or a commercial quantity so as to confer jurisdiction on a Special Court. Ultimately, the criminal appeal came to be allowed. Therefore, in the instant case also, as per mahazar, the respondent police has seized



3 kg 850 grams of ganja leaves which cannot be termed as ganja as per Section 2(iii)(b) of NDPS Act, which says ganja that is flowering or fruiting tops of cannabis plant excluding the seeds and leaves when not accompanied.

13. Further he would submit that the Investigating Officer has not complied with the mandatory provisions of Section 42(1) and (2) of the NDPS Act.

14. In the case on hand, PW6 has deposed in his evidence that on 17.07.2009 at 04.20 p.m he has received the information as to the illegal possession of ganja. After receipt of credible information as to the possession of illegal ganja, the Investigating Officer has not mentioned the same in the station house diary and intimate the same to the higher officers as required under Section 42 of NDPS Act. Without compliance of this provision, the Investigating Officer went to the spot along with panchas and seized alleged ganja under mahazar-Ex.P1.



15. The Investigating Officer has also not complied with the mandatory provisions of Section 52(a) and has not obtained the certificate from the Magistrate.

16. The samples also not taken before the Magistrate. The correctness of the list of samples drawn by the Investigating Officer has not been certified by the Magistrate. After lapse of 3 months, the Investigating Officer has submitted the samples for FSL examination as per Exhibit P8. On all these grounds, sought for allowing this appeal.

17. To substantiate his argument, relied on the decisions of the Hon'ble Apex Court in the case of ***Smt.Najmunisha vs. the State of Gujarat*** reported in ***2024 SCC OnLine SC 520, Mangilal vs. State of Madhya Pradesh*** reported in ***(2023) 19 Supreme Court Cases 364*** and on the judgment of this Court in the case of ***Chandrashekar vs. State of Karnataka in Criminal Petition No.11138/2024*** decided on 29.04.2025.



18. As against this, learned High Court Government Pleader Sri.M.Diwakar Maddur, would submit that trial Court has properly appreciated the evidence on record in proper perspective. There are no grounds to interfere with the impugned judgment passed by the trial Court and sought for dismissal of the appeal.

19. Having heard the arguments on both sides and on perusal of materials placed before this Court, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting accused for the offence punishable under Section 20(b) of NDPS Act?

2. What Order?

Regarding Point No.1:

20. I have carefully examined the materials placed before this Court. It is the case of the prosecution that on 17.07.2009 at about 05.30 p.m. in the house of Arekere



village the accused was found in possession of 3 kgs 850 grams of ganja for the purpose of sale, in contravention of provisions of NDPS Act. Thus, the accused has committed the offence.

21. To substantiate the case of the prosecution, in all, ten witnesses were examined as PWs.1 to 10. Ten documents were marked as Exhibits P1 to P10 and three material objects were marked as MOs.1 to 3.

22. On perusal of the evidence of prosecution witnesses, it is crystal clear that the prosecution has not examined any independent witnesses to substantiate the case of the prosecution.

23. PW1-B.R.Gangadhara, ASI, has deposed in his evidence that on 17.07.2009 he has received the credible information. Then CW2 to CW6 proceeded in a department vehicle to Arekere village to raid. They went to Arekere village and they entered into the house of the accused and found the ganja leaves which was weighing 3 kgs 850 grams and he has conducted mahazar as per Exhibit P1



and took the possession of ganja. He has taken 100 grams of ganja leaves for chemical examination.

24. PW2-Dr.Jawahar has deposed in his evidence that, he was working as Medical Officer in Primary Health Center, Banavara. The PSI, Banavara and CW3 Dr.Sunitha Jain informed him as to the ganja leaves and took him to Arekere village at 05.00 p.m. and he went to the house of Veerabhadraiah. They have entered into the house and found ganja leaves. Police have taken 100 grams of leaves for FSL. Umesha/accused is the son of Veerabhadraiah. Police have conducted the mahazar as per Exhibit P1.

25. PW3-Puttaswamy, Panchayath Secretary of Arekere Grama Panchayath, has deposed his evidence as to issuance of assessment extract-Exhibit P2, which is standing in the name of Rudraiah S/o Veerabhadraiah.

26. PW4, Bhairachari, Head Constable has deposed in his evidence as to the submission of sealed ganja cover to the FSL Mysore.



27. PW5- Madhu, Police Constable has deposed as to the issuance of notice to Dr.Jawahar and Dr. Sunita Jain. Further, he has deposed as to the seizure of ganja as per Exhibit P1.

28. PW6-Dinesh Kumar B.S, has deposed in his evidence that on 17.07.2009 he has received a credible information as to the possession of illegal ganja in the house of Veerabhadraiah at Arekere. Then he gave written requisition to the Gazetted Officers Dr. Jawahar and Sunita Jain to act as panchas. Then P. C. Jagannath, Madhu and Singh along with dedicated officers proceeded to Arekere in a government jeep at 04.30 p.m. and they raided the house and found 3 kgs 850 grams in a plastic bag. They have seized the same under mahazar-Exhibit P1. The accused has possessed that ganja without having any licence. Thereafter, he has taken the custody of the accused and he has *suo-motu* registered the case in Crime No.147/2009 under Section 20(b) of NDPS Act and submitted the First Information Report to the Court as per



Exhibit P5. Thereafter, they have inserted the seized properties in PF No.76/2009. Then they have produced the accused before the Court. Thereafter, he has entrusted the case file for further investigation to Dy.SP.

29. PW7-M. V. Mallapur, CPI, and PW8-T.D.Raju, CPI, have deposed as to the part of their investigation.

30. PW9-Dr.Sunitha Jain has deposed in his evidence as to the mahazar conducted by the police as per Exhibit P4 and seizure of ganja.

31. PW10-P.Mallesha, FSL officer has deposed as to the issuance of certificate-Exhibit P8.

32. After careful examination of the entire materials on record, it is the case of the prosecution that the Investigating Officer has seized the alleged ganja in the house of accused. To substantiate the case of the prosecution, the Investigating Officer has produced Exhibit P2-assessment register extract, pertaining to the property No.653, which is standing in the name of Rudraiah S/o Veerabhadraiah. PW3-Puttaswamy, the Secretary of



Grama Panchayath has deposed as to the issuance of Exhibit P2. He has also clearly reported that this house is standing in the name of Rudraiah S/o Veerabhadraiah. During his cross-examination, he has clearly admitted that in Arekere village, Umesha S/o Veerabhadraiah has no house in the Arekere Grama Panchayath limits. In Exhibit P1-mahazar it is stated that, on 17.07.2009 the Investigating Officer has conducted the mahazar in the house of Veerabhadraiah S/o Rudraiah. The property number is not disclosed in the mahazar. Even after investigation, the Investigating Officer has not shown the property number in the charge-sheet. In the charge-sheet, the Investigating Officer has simply stated that they have raided the house of the accused. The Investigating Officer has not produced any document to show that, the house in question was standing in the name of the accused-Umesh. Even Investigating Officer has not explained anything as to how Exhibit P2-assessment extract is connected to the accused. The relationship between Rudraiah S/o



Veerabhadraiah and the accused has not been explained by the prosecution. Accordingly, the prosecution has failed to prove that the Investigating Officer has seized the alleged ganja from the possession of the accused in the house property No.653.

33. According, to the prosecution that, PW6 has received the information as to the illegal possession of the alleged ganja on 17.07.2009 at 04.30 p.m. But Investigating Officer has not taken the same in writing and informed to immediate official superior. During the course of cross- examination of PW6. He has not whispered anything as to the fact that soon after the receipt of credible information he has taken down in writing and informed the same to the higher officers as required under Section 42 of NDPS Act, 1985.

34. PW6 has clearly admitted in his evidence that he has not obtained search warrant before entering into the house in question. He has not explained anything as to non-obtaining of search warrant as required under Section



42 of NDPS Act. The Investigation Officer has also not complied with the mandatory provisions of Section (5) of Section 50 of NDPS Act and Sub-section 7 of Section 100 of Cr.P.C.

35. Viewed from any angle, I do not find any material to prove the mandatory provisions of Section 42, 50, 52A of NDPS Act, 1985. Without proper appreciation of the evidence on record, the trial Court has convicted the accused, which is not sustainable under law.

36. On re-appreciation, reconsideration and re-examination of the entire materials on record. I do not find any material to convict the accused for the offence punishable under Section 20(b) of NDPS, Act. Hence, I answer point No.1 in the negative.

Regarding Point No.2:

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

ORDER

- i) Appeal is allowed.



ii) The judgment of conviction and order on sentence passed by the Prl. Sessions Judge and Special Judge, Hassan in Spl.Case(NDPS) No.71/2009 dated 30.06.2015 is set aside.

iii) The accused/appellant is acquitted of the offence under Section 20(b) of NDPS Act.

iv) The trial Court is directed to return the fine amount if any deposited by the accused.

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

**Sd/-
(G BASAVARAJA)
JUDGE**