



CNR: KAHC010384702015

NC: 2026:KHC:54561
CRL.A No. 1012 of 2015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 30TH DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 1012 OF 2015 (C)**

BETWEEN:

1. KUNHIMONU @ HUSSAIN SHARIEF
AGED ABOUT 28 YEARS
S/O LATE M K AHMED
R/AT SHEMAR MANZIL
NO.24/15-15, MJM 255
KASABA BENGRE
MANGALURU - 575 003
2. ABDUL RAHIM @ CHAPPATHANNAI RAHIM
AGED ABOUT 29 YEARS
S/O M MOIDIN
R/AT BENGRE KASBA BAZAAR
MJM 975, MANGALURU - 575 003

...APPELLANTS

(BY SRI. B. LETHIF, PRO-BONO ADV. FOR APPELLANT NO.2,
VIDE COURT ORDER DATED: 28.09.2026 - CASE AGAINST
APPELLANT NO.1 IS ABATED.)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU - 560 001

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

CRL.A. FILED U/S.374(2) CR.P.C BY THE ADV. FOR THE
APPELLANTS/ACCUSED NO.1 AND 2 PRAYING THAT THIS



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HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 10.3.2015 PASSED BY THE PRL. S.J./SPL. JUDGE, MANGALURU IN SPL. CASE NO.22/2009 - CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 8(c) R/W 20(b)(II)(B) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT.

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 appellants have preferred this appeal against the judgment of conviction and order on sentence passed by the Prl. Sessions Judge/Special Judge, Mangaluru in Special Case No.22/2009 dated 10.03.2015.

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

3. Brief facts leading to this appeal are that, the Police Inspector, Coastal Security Police Station, Mangaluru, has submitted the charge-sheet against accused Nos.1 and 2 for the offence punishable under



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Section 8(c) read with 20(b) of Narcotic Drugs and Psychotropic Substance Act (NDPS Act).

4. It is alleged by the prosecution that, on 16.06.2009 at about 10.00 a.m., the accused Nos.1 and 2 were found in illegal possession of 1.200 kgs of ganja on the seashore at Bolor of Thanneerubhavi, Mangalore Taluk, within the limits of Coastal Security Police Station, Mangaluru. The accused persons were possessing the ganja with an intention of selling the same to general public without having any permit or license to possess the said ganja. Thereby, the accused have committed the alleged offences.

5. The accused were on bail. Upon hearing the charges the trial Court has framed the charge for the offence punishable under Section 8(c) read with 20(b) of NDPS Act and the same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.



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6. To prove the guilt of the accused, in all, five witnesses were examined as PW1 to PW5. Nine documents were marked as Exhibits P1 to P9. Three material objects were marked as MOs. 1 to 3. On closure of prosecution side evidence, statement of the accused under Section 313 of Code of Criminal Procedure were recorded. Accused have totally denied the evidence of prosecution witnesses. However, they did not choose to lead any defence evidence on their behalf.

7. Having heard the arguments on both sides, the trial Court has convicted the accused Nos. 1 and 2 for the offence punishable under Section 8(c) read with Section 20(b)(ii)(B) of NDPS Act and passed a sentence to undergo rigorous imprisonment for a period of two years each and to pay fine of Rs.10,000/- each. Being aggrieved by this judgment of conviction and order on sentence passed by the trial Court, the appellants have preferred this appeal.



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8. Sri B Lethif, learned Pro Bono counsel appearing on behalf of the appellant No.2 would vehemently submit that the judgment of conviction and order on sentence passed by the trial Court is highly illegal, unreasonable and opposed to law and facts. The trial Court has committed serious material irregularities and illegalities in appreciating the material evidence available on record.

9. The trial Court has failed to appreciate that the investigating Officer has not complied with the mandatory provisions of Section 50 of NDPS Act. The investigation officer himself is the complainant in this case and he himself registered the case against the accused persons. The Investigating Officer ought to have complied with the mandatory provision of Section 50 of NDPS Act and this aspect has not been appreciated by the trial Court.

10. PW1 to PW3 are the police officials and they are interested with cases. The incident according to the prosecution has occurred 10.00 a.m. and PW1 along with



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the staff went to the place of incident at 12.25 p.m. Even the story of the prosecution is believed, it is very difficult to believe that the accused person is still waiting till arrival of the police at 12.25 p.m. Therefore, it is clear that it is nothing but a concocted story. The trial Court has failed to appreciate the material evidence on record in accordance with law and facts.

11. Further, the learned counsel would submit that the alleged ganja was seized from the possession of accused No.1. The police have not seized the alleged ganja from the possession of accused No.2. During the pendency of the appeal, accused No1. passed away and the appeal stands abated against appellant No.1 as per order dated 28.09.2026. On all these grounds sought for allowing this appeal.

12. As against this Sri K. Nageshwarappa, learned High Court Government Pleader appearing for the respondent-State would submit that the trial Court has



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properly appreciated the evidence on record in accordance with law. Absolutely, there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court and accordingly, sought for dismissal of this appeal.

13. 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 punishable under Section 8(c) read with Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act?
2. What order?

Regarding Point No.1:

14. It is the case of the prosecution that on 16.06.2009 at about 10.00 am, the accused was in illegal



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possession of 1.200 kgs of Ganja on the sea-shore at Bloor, Thannerubavi, Mangalore Taluk within the limits of Coastal Security Police Station. The accused was intending to sell the same to the general public, without any permit or licence to possess the said ganja. To prove the case, prosecution has examined 5 witnesses as PWs1 to 5, got marked 9 documents as Exhibits P1 to P9.

15. Exhibit P1 is the seizure mahazar dated 16.06.2009, which reveals that the Police have apprehended accused No.1 and upon enquiry Police came to know the name of accused No.1 as Kunhimonu. Police have seized ganja from the possession of accused No.1. Exhibit P3-FIR reveals that accused No.2 Chappatannai Rahim, is shown as absconding.

16. The seizure mahazar was conducted on 16.06.2009. After seizure of ganja and also Rs.500/- seized from the possession of accused No.1, the investigating Officer has inserted the same in the property



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Form No.3 of 2009. But the property form is not submitted to the Court. Property Form No.3 of 2009 produced by the investigating officer does not real the order of Magistrate. Accordingly, Investigating Officer has failed to comply with the mandatory provisions of Section 102 of Cr.PC. Further, the Investigating Officer has not explained anything as to non-compliance of mandatory provisions of Section 102 of Cr.PC. The investigating officer has also not complied with the mandatory provisions of Sections 42 and 50, as also Section 52A of NDPS Act.

17. PWs1 to 3 are official witnesses. PW4-B. Lingappa has deposed as to issuance of FSL report as per Exhibit P4. PW5 said to the attester to seizure mahazar-Exhibit P1, has not supported the case of the prosecution. Even after treating him as hostile witness with the permission of the Court and during cross-examination by the PP, he has categorically denied as to the statement said to have been recorded by the Investigating Officer



under Section 161 of Cr.PC which is marked as Exhibits P8 and P9.

18. Admittedly, the Investigating Officer has seized the alleged ganja from the possession of accused No.1. During the pendency of this appeal, accused No.1 passed away and appeal against accused No.1 stands abated. On careful examination of the entire evidence on record, I do not find any evidence to convict accused No.2, which is appellant No.2 in this case. The non-compliance of Sections 42, 50 and 52A of NDPS Act and Section 120 of Cr.PC, is fatal to the case of the prosecution. Accordingly, the appellant No.2/accused No.2 has made out grounds to interfere with the impugned judgment of conviction. Hence, I answer point No.1 in the affirmative.

Regarding Point No.2:

19. For the reasons afore-stated and discussions, I proceed to pass the following:



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ORDER

- i. Appeal is allowed;
- ii. Judgment of conviction and order on sentence dated 10.03.2015 passed in Special Case No.22/2009 by Prl. Sessions Judge/Special Judge, Mangaluru, is set aside;
- iii. Appellant No.2/Accused No.2-Abdul Rahim @ Chappathannai Rahim is acquitted of the offence under Section 20(b)(ii)(B) of NDPS Act, 1985;
- iv. The trial Court is directed to refund the fine amount, if any deposited by the appellant No.2/accused No.2-Abdul Rahim @ Chappathannai Rahim;
- v. Registry is directed to communicate this order to the concerned jail authority forthwith and



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the concerned jail authority is directed to
release the accused forthwith, if he is not
required in any other case.

The assistance of Pro Bono Advocate Sri B. Lethif, in this
matter, is appreciated and placed on record.

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

LNN
LIST NO.: 1 SL NO.: 100