

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRL.A.No. 772 of 2014 ()

**AGAINST THE JUDGMENT IN SC 390/2012 of III ADDITIONAL DISTRICT & SESSIONS
COURT, THRISSUR DATED 20-03-2014**

CRIME NO. 423/2012 OF CHAVAKKAD POLICE STATION

APPELLANT:

**MOIDEENKUTTY ,
S/O. MUHAMMED, CONVICT NO.2687, CENTRAL PRISON, KANNUR
(THROUGH THE SUPERINTENDENT CENTRAL PRISON, KANNUR)**

BY ADV. ADV. SREEJA. V (STATE BRIEF)

RESPONDENT:

**STATE OF KERALA
REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.772 of 2014

Dated this the 11th day of February, 2015

J U D G M E N T

The appellant was the sole accused in Sessions Case No.390/2012 on the file of the III Additional District & Sessions Judge, Thrissur. The allegation was that on the Blangad Beach at Chavakkad he was found to be in possession of 2 kg. ganja. He has been convicted of the offence under Section 20(b) (ii) (B) NDPS Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- with a default clause.

2. The prosecution story has been unfolded in the evidence of PW6, C.I. of Police. On 3.5.2012 at about 10 a.m. he got reliable information that near a toddy shop on the Blangad Beach a person wearing lungi and white shirt had brought 2 kg. ganja for sale. He recorded it and sent a copy of the information to the Deputy Superintendent of Police, Kunnamkulam. Along with A.S.I. Surendran and

some Civil Police Officers he rushed to the spot where he saw the accused with a packet in his hand. The police personnel restrained him and told him that he would be searched for possession of ganja and asked him whether he would like to have the presence of a Magistrate or a gazetted officer. He responded in the affirmative. PW3 Tahsildar was sent for. MO1 packet which was found in the possession of the appellant had 2 kg. ganja in it. Three samples were taken of it. They were sealed at the place of occurrence. The body of the appellant was searched. From his pocket MO3 mobile phone and MO4 series currency notes were seized. Ext.P1 is the mahazar prepared for the search.

3. The sample was sent for chemical analysis. Ext.P10 certificate proves that the contents was ganja.

4. The prosecution examined PW1 Sreenivasan and PW3 Tahsildar to prove the incident. PW1 resides 1 ½ furlongs away from the place of occurrence. He is a fisherman working near the Blangad Beach where the

offence took place. Both PW1 and PW3 have supported the prosecution case. PW3 Tahsildar reached the spot at the request of PW6 C.I. of Police to conduct the search of the body of the appellant. Both PW1 and PW3 identified MO1 as the packet the accused had in his hand. They deposed to the search and seizure of ganja, mobile phone and currency notes. PW3 Tahsildar has signed Ext.P1 mahazar prepared for the seizure.

5. The learned counsel for the appellant submits that copy of the information PW6 C.I. of Police allegedly sent to his superior officer has not been produced and there was no compliance with Section 42(2), nor was there strict compliance with Section 50 of the NDPS Act.

6. On the other hand, the learned Public Prosecutor would submit that the search was conducted at a public place and it was not necessary to comply with Section 42 (2) of the NDPS Act and as the ganja was seized not in the search conducted of the body of the appellant non-compliance with Section 50 of the Act is not at all relevant.

7. The place of occurrence is a beach which is a public place. As held by the Supreme Court in **State of Punjab v. Baldev Singh [(1999) 6 SCC 172]** and **Karnail Singh v. State of Haryana [(2009) 8 SCC 539]** when the search is conducted at a public place compliance with Section 42(2) is not at all necessary. Compliance with Section 50 is necessary only in the case of search of the person of the accused. In this case ganja was seized not in the search conducted of the person of the appellant. So Section 50 also is not applicable.

8. In the evidence of the detecting officer PW6 C.I. of Police or the witness PW1 Sreenivasan or PW3 Tahsildar in whose presence the search was conducted nothing was brought out to impeach their credibility. Their evidence appears to be very natural. The appellant had not been known to any of the witnesses. He was a stranger to the place of occurrence. No motive has been attributed to any of the witnesses to falsely implicate him in the case. Their evidence unerringly proves that the appellant had in his

possession 2 kg. ganja. His conviction is only to be upheld. The sentence imposed on him cannot be said to be harsh having regard to the quantity of the ganja. I do not find any merit in this appeal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

shg/