HC-KAR

NC: 2026:KHC:64665
CRL.A No. 90 of 2015

CNR: KAHC010149002015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.90 OF 2015 (C)

BETWEEN:

MOHAMMED SIRAJ
S/O ABOOBAKKAR
AGED ABOUT 31 YEARS
R/AT ULLAL QUARTERS
THOUDUGOLI CROSS
NARINGANA VILLAGE
BANTWAL TALUK - 574 217

...APPELLANT

(BY SRI. PRUTHVEEN KATTIMANI, ADVOCATE FOR
SRI. ARUN BANGERA, ADVOCATE)

AND:

STATE OF KARNATAKA
BY COASTAL SECURITY POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BANGALORE - 560 001

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

Digitally signed by GEETHA P G
Location: HIGH COURT OF KARNATAKA

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED: 16.12.2014/17.12.2014 PASSED BY THE PRL.SESSIONS JUDGE/SPECIAL JUDGE, D.K., MANGALURU IN SPL.C.NO.25/2009 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S 8(C) R/W 20(B)(II)(B) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, AND THE APPELLANT/ ACCUSED NO.1 MOHAMMED SIRAJ WHO

IS FOUND GUILTY IS SENTENCED TO UNDERGO RIGOROUS IMPRISONMENT FOR TWO YEARS AND TO PAY FINE OF RUPEES TEN THOUSAND, AND IN DEFAULT, HE SHALL UNDERGO FURTHER R.I. FOR SIX MONTHS AND THE APPELLANT/ACCUSED NO.1 PRAYS THAT HE BE ACQUITTED.

THIS CRL.A., COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction dated 16.12.2014 and order on sentence dated 17.12.2014 passed by the Principal Sessions Judge/Special Judge, D.K., Mangaluru, in Special Case No.25/2009.

2. The parties shall be referred to herein as arrayed before the Trial Court.

3. The brief facts leading to this appeal are as under:

(a) The Police Inspector, Coastal Security Police Station, Mangaluru, have submitted the charge sheet against the accused for the offence punishable under Section 8(c) read with 20(b)(ii) of the Narcotic Drugs and Psychotropic Substance Act ('NDPS Act'). It is alleged by the prosecution that on

14.07.2009 at 11:00 a.m., near sea shore at Subhash Nagar of Ullala village, accused nos.1 and 2 were found in illegal possession of 1.400 kilograms of Ganja without any pass or permit for the purpose of selling the same to general public. Thus, the accused have committed the alleged offences.

(b) After registration of the case, in response to the summons, the accused have appeared before the Court and were enlarged on bail. On hearing the charges, the trial court has framed charges against the accused for the alleged offences. Same were read over and explained to the accused. However, the accused have pleaded not guilty and claimed to be tried.

(c) To prove the guilt of the accused, the prosecution has examined five witnesses as PWs.1 to 5 and nine documents were marked as Exs.P1 to 9. On closure of the evidence of the prosecution, statements under Section 313 of Cr.P.C were recorded. The accused have totally denied the evidence of the prosecution witnesses. However, they did not choose to lead any defence evidence on their behalf. But, Ex.D1 has been marked during the cross examination of PW.4.

(d) Having heard the arguments on both sides, the trial court has convicted accused no.1 for the offence punishable under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act and has been sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.10,000/-. The trial court has acquitted accused no.2. Being aggrieved by the judgment of conviction and order on sentence, accused no.1/appellant has preferred this appeal.

4. The learned counsel for the appellant would submit that the impugned judgment of conviction and order on sentence passed by the trial court is highly illegal, unreasonable and opposed to law and facts of the case; that the Investigating Officer has not complied with the mandatory provisions of Sections 50 and 52A of the NDPS Act and that the mahazar witnesses are not the independent witnesses and they are the stock witnesses.

5. It is further submitted that, PW.3 has clearly deposed that he has not seen who was in possession of Ganja and that PWs.2 and 3, who are the witnesses to the mahazar, have clearly deposed that the Police have informed that they have

seized Ganja at Subhash Nagara and instructed them to be witnesses to the mahazar. This evidence clearly establishes that the Police have not seized Ganja from the possession of the appellant in the presence of Panchas 2 and 3. However, the trial court has not considered the same. The Investigating Officer has prepared Seizure mahazar - Ex.P1 in the police station and no mahazar has been drawn in the alleged place as stated by the Investigating Officer. The evidence of PWs.1 to 3 and 5 are contradictory and material contradictions are found in their evidence which discloses that no search and seizure has taken place as contended by the prosecution. The Investigating Officer himself has conducted the investigation and submitted the charge sheet against the accused. Hence, it is submitted that there is no direct evidence against the appellant and sought for allowing this appeal.

6. Learned counsel for the appellant has relied upon the following decisions to substantiate his arguments:

1. Suresh and Others v. State of Madhya Pradesh [(2013)1 SCC 550
2. Ashok Kumar Sharma v. State of Rajasthan [(2013)2 SCC 67]

3. State of Rajasthan v. Parmanand and Another [(2014)5 SCC 345]
4. Abdul Rajik v. State of M.P. [(2026) 10 SCR 180]

7. Learned HCGP Sri K.Nageshwarappa appearing for the respondent would submit that the trial court has properly appreciated the evidence on record in accordance with law and facts and absolutely there are no materials to interfere with the impugned judgment of conviction and sought for dismissal of the appeal.

8. Having heard the arguments on both sides, the following points would arise for my consideration:

(1) Whether the appellant/accused no.1 has made out grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial court?

(2) What order?

9. My finding to the above points are as answered as follows:

Point No.1: Affirmative.

Point No.2: As per final order.

Regarding point No.1:

10. I have carefully examined the materials placed before this court. It is the case of the prosecution that on 14.07.2009 at 11:00 a.m., accused nos.1 and 2 were found in possession of 1.400 kilograms of Ganja near the sea shore at Subhas Nagara of Ullal village, which was valued at Rs.19,740/- with an intention to sell the same to general public. On seeing the police, both the accused tried to escape, but accused no.1 was caught red handed along with ganja and accused no.2 managed to escape. It is alleged that accused nos.1 and 2 have committed the alleged offences.

11. To prove the case of the prosecution, the prosecution has examined PW.1-Mukunda Nayak, who was working as a Police Inspector in Coastal Security Police Station, Mangaluru. He has deposed that on 14.07.2009, at about 09:30 a.m., one of his staff i.e., H.C.Harish had called him over phone and informed that two persons were found near the sea shore at Subhas Nagara, Ullal who are in possession of Ganja and are waiting for customers. He informed the same to his higher officers, recorded the same in the Station House Diary and left the

police station at 09:40 a.m. along with the staff in the jeep. They have reached near the scene of offence at 11:00 a.m. and met H.C.Harish who showed two persons near the sea shore. Further, he has deposed that the accused tried to escape from the scene when tried to apprehend them. However, the police managed to catch hold of accused no.1 and accused No.2 managed to escape from the place. Accused no. 1 revealed the name of accused no.2. Accused no.1 was holding a parcel (kattu) in his hand containing ganja. Thereafter, two panchas were summoned to the scene of offence and he has conducted the mahazar as per Ex.P1 in presence of panchas and seized 1.400 kg of ganja. He has taken the sample - 100 grams ganja for sending the same to chemical examination. PW.1 has prepared a *suo motu* report on the basis of which a case was registered against accused nos.1 and 2 and he informed all the facts to his higher officers and seized sample was sent for FSL. On 24.08.2009, he has received the FSL report and submitted the charge sheet against the accused. PW.2-Pradeep Kotian and PW.3-Mohan Kumar said to be witnesses to the mahazar have partly supported the prosecution and both witnesses are treated as hostile witnesses and cross-examined by the

prosecution. During their cross-examination, they have categorically denied the statements said to have been recorded by the Investigating Officer under Section 161 of Cr.P.C, which were marked as Exs.P8 and P9.

12. PW.4 - Rajaram Head Constable, PW.5 Harish.H.V. have supported the case of the prosecution. They have deposed relating to the seizure of Ganja from the possession of accused No.1.

13. The alleged incident took place on 14.07.2009 at 09:40 a.m. and after conducting mahazar, the case was registered on the same day at 11:00 a.m. and the FIR was submitted to the Court on 14.07.2009 at 06:35 p.m. wherein the name of accused nos.1 and 2 are shown. The particulars of the property involved in this case is shown as 1 kilogram. But, Exhibit P.1 - seizure mahazar dated 14.07.2009 reveals that the Investigating Officer has seized 1.400 kilograms. Therefore, there is no consistency relating to the seizure of Ganja mentioned in the FIR and seizure mahazar. The Investigating Officer has not produced general diary reference, entry number and time.

14. The Investigating Officer has not stated whether the mandatory provisions of Section 42 of the NDPS Act have been complied with. PW.1 has deposed that he has received the message as to the possession of Ganja by the accused on 14.07.2009 at 09:30 a.m. However, he has not deposed as to the entry of this message in general diary maintained by the concerned police. In Ex.P.3 - FIR in Column No.2(d), General Diary reference Entry Number and Time is shown as 10/14:30 hours. Even before receiving the information, he has prepared a mahazar. Ex.P.1 reveals that the Investigating Officer has conducted the mahazar on 14.07.2009 between 11:15 hours and 13:15 hours. It shows that only after conducting seizure mahazar and arresting the accused, the Investigating Officer has entered the general diary reference as 10/14.30 hours. The copy of the general diary extract is not produced by the Investigating Officer to show that he has received the message as to the illegal possession of Ganja by the accused on 14.07.2009 at 09:40 a.m. The Investigating Officer has not complied the mandatory provisions of Section 100 of the Code of Criminal Procedure. The Investigating Officer has also not placed any materials to show that, after the seizure of the

property as reported, he has submitted a report to the concerned Court as required under Section 102 of the Code of Criminal Procedure.

15. As I have already discussed above, the seized property does not tally with the property shown in the FIR. The evidence of PW.1 has not been substantiated by the independent witnesses as the independent witnesses have not supported the case of the prosecution. Viewed from any angle, I do not find cogent, convincing, corroborative legal evidence before this Court to convict accused No.1. However, the trial court has convicted accused no.1 which is not sustainable in law. Hence, I answer point No.1 in the affirmative.

Regarding point No.2:

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

ORDER

(i) The Criminal Appeal is ***allowed***;

(ii) The impugned judgment of conviction dated 16.12.2014 and order on sentence dated 17.12.2014 passed by the Principal Sessions

Judge/Special Judge, D.K., Mangaluru, in Special Case No.25/2009 is set aside;

(iii) Accused No.1/appellant is acquitted of the offence punishable under Section 8(c) read with 20(b)(ii)(B) of the NDPS Act;

(iv) The bail bond of the appellant shall stand cancelled;

(v) The trial court is directed to refund the fine amount deposited, if any, to the appellant.

(vi) Registry is directed to send a copy of the judgment along with TCR to the trial court.

Sd/-
(G BASAVARAJA)
JUDGE

hkh.
List No.: 1 Sl No.: 25