HC-KAR

NC: 2026:KHC:64078
CRL.A No. 52 of 2016

CNR: KAHC010370462016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 52 OF 2016 (A)

BETWEEN:

1. INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
BANGALORE ZONAL UNIT,
NO.7/1-2, PRIYANK VILLAS,
RAMANNA GARDEN, BAGLUR MAIN ROAD,
KATTIGENAHALLI, YELAHANKA,
BANGALORE-560 063.

…APPELLANT

(BY SRI. KUMAR M. N.,ADVOCATE)

AND:

1. RAJU
S/O SEWA RAM
AGED AROUND 27 YEARS
R/O CHHAPEDA MOHALLA,
VILLAGE: MORAK, TEHSIL: RAMGANJMANDI,
DISTRICT:KOTA, RAJASTHAN.

2. MANAK CHANDRA
S/O DALU RAM,
AGED AROUND 47 YEARS,
R/O VILLAGE: PATAN,
JHALAWAR DISTRICT, RAJASTHAN

(NEW ADDRESS)
R/O: NEAR VIJAY SINGH FARM,
KOTA ROAD, GOPALAPURA VILLAGE,
JHALAWAR DISTRICT, RAJASTHAN.

…RESPONDENTS

(BY SRI. B S PRASAD, ADV. FOR R1 & R2.)

Digitally signed by LAKSHMINARAYAN N
Location: High Court of Karnataka

HC-KAR

NC: 2026:KHC:64078
CRL.A No. 52 of 2016

CNR: KAHC010370462016

CRL.A. FILED U/S.378(1) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 09.07.2015 IN SPL.C.C.NO.236/2013 PASSED BY THE XXXIII ADDL. CITY CIVIL AND S.J. AND SPL. JUDGE (NDPS), BANGALORE - ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCE P/U/S 8(c) R/W 18,23,27A,28 AND 29 OF NDPS 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

1. The State by Intelligent Officer, has preferred this appeal against the judgment of acquittal dated 09.07.2015 passed in Spl.C.C.No.236/2013 by the XXXIII ACC & SJ & Spl. Judge [NDPS], Bengaluru (for short, 'the trial Court).

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

3. Brief facts leading to this appeal are that, Intelligence Officer, Narcotics Control Bureau, Bengaluru Zonal Unit, filed complaint against the accused Nos.1 to 4 under Sections 18, 23, 27A, 28 and 29 for the offences

U/Secs.8(c) read with 18, 23, 27A, 28 and 29 of N.D.P.S. Act. It is alleged by the prosecution that on 13.05.2013 at 05:00 pm, the cabin of vehicle No.RJ-20-GA-2252 near Govardhan Cinema Talkies near Yeshwanthapur Mandi of Bengaluru, was searched and accused Nos.1 and 2 along with accused Nos.3 and 4 have entered into criminal conspiracy at Agar Village, Ujjain District to procure process, conceal, finance, transport, and thereby, accused were transporting 15.038 kgs of Opium keeping in the said vehicle at the above said place, time and date. The said property was recovered from their possession and thereby, accused Nos.1 to 4 have committed the alleged offences.

4. Accused were produced before the Special Court and enlarged on bail. On hearing, the trial Court has framed the charges for the commission of offence under Section 8(c) read with Secs. 18, 23, 28 and 29 of N.D.P.S. Act. Same was read over to the accused Nos.1 and 2 and they pleaded not guilty. The split-up case has been registered against accused Nos.3 and 4.

5. To prove the guilt of the accused, prosecution has examined 7 witnesses as PWs.1 to 7; 33 documents were marked as Exs.P1 to P33 and 6 material objects were marked as MOs.1 to 6. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C. was recorded. Accused have denied the evidence of prosecution witnesses, however, they did not choose to lead any defence evidence on their behalf. Having heard the arguments on both sides, the trial Court has acquitted the accused. Being aggrieved by the said judgment, the State has preferred this appeal.

6. The learned counsel for the appellant Sri Kumar M.N would submit that, the Judgment of the Court below is contrary to the evidence and Rule of law and the same is arbitrary, without appreciating the facts of the case and the same is liable to be set aside. The Trial Court failed to appreciate the evidence of Prosecution Witnesses, Exhibits marked by the Prosecution side and material objects

regarding offence committed by the accused under the provisions of N.D.P.S Act.

7. The Judgement of the Court below is contrary to the evidence and Rule of law and the same is arbitrary, without appreciating the facts of the case and hence the same is liable to be set aside. The Trial Court failed to appreciate the Exhibits marked by the Prosecution side and material objects regarding offences under the provisions of N.D.P.S Act, against the Respondents, while passing the judgment.

8. The Trial Court, upon framing of charges against the Respondents 1 and 2 and on conduct of the trial of the Respondents and hearing, has concluded that the prosecution has failed to establish the charges against the Respondents 1 and 2 and has acquitted them of the offences charged.

9. The Trial Court has erred in expressing complete doubt with the very seizure of the contraband by the NCB

Officers and has pointed out various contradictions and discrepancies in the depositions of each of the Official Witnesses with respect to the sequence of events of investigation of the case at every stage and that investigations showed lack of professional approach to the case.

10. The Trial Court has erred in coming to conclusion that there are considerable contradictions and discrepancies found in the prosecution witnesses. There is no link of chain found in the circumstancial evidence, without appreciating the Prosecution Witnesses who have deposed and supported to the case of prosecution.

11. The Trial Court totally misunderstood the case of the prosecution with a conclusion that Accused were connected with the present crime.

12. Further it is submitted that the trial Court has failed to appreciate the evidence on record in accordance with law and facts and sought for allowing this appeal.

13. As against this, the learned counsel for the respondents Sri B.S Prasad would submit that the prosecution has failed to prove the mandatory compliance of the provisions of Section 50 of NDPS Act. The trial Court has properly appreciated the evidence on record in accordance with law and facts. Absolutely, there are no materials to interfere with the impugned judgment of acquittal and sought for dismissal of the appeal.

14. 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 acquitting the accused?

(2) What order?

15. My answer to the above points are as under:

Point No.1: in the Affirmative

Point No.2: as per final order

Regarding Point No.1:

16. Before appreciation of evidence on record, it is necessary to mention as to the judgments of the Hon'ble

Apex Court in the case of CONSTABLE 907 SURENDRA SINGH AND ANOTHER v. STATE OF UTTARAKHAND reported in (2025)5 SCC 433; BABU SAHEBGOUDA RUDRAGOUDAR AND OTHERS v. STATE OF KARNATAKA reported in (2024)8 SCC 149; CHANDRAPPA v. STATE OF KARNATAKA reported in (2007)4 SCC 415; and H.D. SUNDARA v. STATE OF KARNATAKA reported in (2023)9 SCC 581. The principles governing exercise of appellate jurisdiction while dealing with an appeal against judgment of acquittal under section 378 of Code of Criminal Procedure are, the acquittal of the accused further strengthens the presumption of innocence; the appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence; the appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record; if the view taken is a possible view, the

appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible. The interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised only if the judgment of acquittal suffers from patent perversity; the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

17. I have examined the materials placed before this Court. To prove the guilt of the accused, prosecution has examined 7 witnesses as PWs.1 to 7, 33 documents are

marked as Exs.P1 to P33 and 6 material objects were marked as MOs.1 to 6.

18. On careful examination of the entire evidence of PW1 to PW7 the trial Court has observed as under:

> *"P.W.1 has stated that he orally obtained permission from P.W.5 to search. No authority letter is given by P.W.5 or P.W.1 to P.W.7 for further investigation. So any further investigation conducted by P.W.7 is not admissible under law, as he is not an authorised person. In the cross-examination P.W.7 has stated that he has not recorded reasons for search of lorry between sunset and sunrise. Further he has stated that there is no any document sent by NCB, Jodhpur making link with accused Nos.1 and 2 to that of accused No.3 Yunus. P.Ws.4, 6 and 7 have not put their signature on mahazar. Even mobile number given in the voluntary statement of accused and mobile seized from them are not connected to each other. No material is placed regarding accused contacted with their mobile to the number given in voluntary statement.*
>
> *19. P.W.2 has stated that on 20/05/2013 he opened one sealed cover containing narcotic drug and conducted different tests and issued opinion Ex.P.15 stating that contents of the packets responded*

positive for Opium with Morphine content of 4.7%. In his cross-examination stated that in Ex.P.16 kinds of tests were not mentioned and RF value is not noted. Of course from the testimony of P.W.2 it may be believable Opium, but said opium is seized from the accused as per provisions of the Act is not proved. So the testimony of P.W.2 is not helpful without corroborated evidence.

20. P.W.3 owner of the lorry has stated that on 13/05/2013 his lorry No.RJ-20-GA-2252 came to Bengaluru. Sri Balchand was his driver. On 14/05/2013 the driver Balchand informed him through phone that lorry is seized by officer of the narcotic drugs. Since then Balchand is not met him. He is seeing the accused persons first time in open Court. He do not know who carried the Opium in the said lorry. In his cross-examination stated that he do not know who was the cleaner and second driver along with Balchand. He admits that Balchand had ran away from the lorry and Balchand informed that lorry was detained near Tollgate. According to prosecution, accused persons were only present in the lorry and charge sheet filed against accused No.3 Mohammed Yunus, accused No.4 Balchand on the basis of confession statement of accused Nos.1 and 2. Case against accused Nos.3 and 4 is split up. Witnesses have not stated in their chief examination

that Balchand driver ran away immediately after stop the lorry. Even witnesses have not stated that who was driving the lorry between accused Nos.1 and 2. Such being the case whether accused No.1 and 2 having the knowledge about Opium kept in the lorry and they have conscious possession of the Opium kept in gunny bag is not proved. In the confession statement, accused have stated that they brought gunny bag from accused No.3 and has to deliver at Yeshwanthapur to mobile number given of unknown person. As per statement, accused do not know the name of the person to be delivered. So when accused persons are not known the name of the person, then there is possibility that they do not know contents of the bag. So the testimony of P.W.3 is not helpful to the prosecution to prove the guilt against accused.

21. Learned advocate for accused has relied on the decisions reported in AIR 2002 Supreme Court 1810 – Beckodan Abdul Rahiman vs. State of Kerala, 22007 (1) Supreme Court Cases 450 – Dilip and another vs. State of M.P., 2007 (1) Supreme Court Cases (Cri) 744 – Ritesh Chakarvarti vs. State of M.P., AIR 2009 Supreme Court 2441 – State of U.P. vs. Subhash Kumar Singh Tomar, 2013 CRI.L.J. 474 (Supreme Court) Suresh and others vs. State of Madhya Pradesh, 2011 CRI.L.J. 680 (Supreme Court)

Vijaysinh Chandubha Jadeja vs. State of Gujarat, AIR 2013 Supreme Court 357 – Kishan Chand vs. State of Haryana, 2009 CRI.L.J. 4299 (Supreme Court) – Karnal Singh vs. State of Haryana, AIR 2005 Supreme Court 2221 – State of Rajasthan vs. Ram Chandra 1999 Supreme Court 2378 – State of Punjab vs. Baladev Singh, etc. etc., 1998(8) Supreme Court Cases 655 – Mohinder Kumar vs. State, Panaji, Goa, 2004 AIR SCW 4995 – State of West Bengal and others vs. Babu Chakraborty, 2014 CRI.L.J. 1756 (Supreme Court) – State of Rajasthan vs. Parmanand and another, 1992 CRI.L.J. 3034 (Bombay High Court) – Shankar Raju Banglorkar vs. State of Goa, 1998 Supreme Court Cases (Cri) 1516 – Namdi Francis Nwazor vs. Union of India, another, 2013 AIR SCW 312 – Sukhdev Singh vs. State of Haryana, AIR 2001 Supreme Court 1002 – Gurubax Singh vs. State of Haryana, 2007 AIR SCW 497 – Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram, AIR 1054 S.C. 4 – Muthuswami vs. State of Madras, 1996 CRI.L.J. 148 – Rubyana alias Smitha Sanjib Bali vs. State of Maharashtra and AIR 2956 S.C. 217 – Aher Raja Khima vs. State of Saurashtra.

22. On careful reading of above decisions, Their Lordships held that ***the compliance of provisions of Sections 42 and 50 of the Act are mandatory***

and Section 57 of the Act is a directory. A presumption U/Sec.54 of the Act can only be raised after the prosecution has established. Further failure of I.O to make full report of all particulars to his immediate superior and to comply procedure U/Sec.57 of the Act. Prosecution must prove conscious and intelligent possession by accused. *The facts, circumstances and ratio are similar with case on hand.*

23. For the above, so many considerable contradictions and discrepancies found in the prosecution witnesses. There is no link of chain found in the circumstantial evidence. Serious doubt will arise in the mind of the Court to believe that accused have committed the offences. So accused are entitled for the benefit of doubt. Hence prosecution has utterly failed to prove the guilt beyond reasonable doubt. Accordingly, I answer point Nos.1 to 4 in the 'negative'."

19. On careful examination of the entire evidence on record, I do not find any factual or legal error committed by the trial Court. Considering the facts and circumstances

of the case and also keeping in mind the aforesaid decisions, I answer point No.1 in the affirmative.

Regarding Point No.2

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

O R D E R

Appeal is **dismissed**.

The Registry is directed to send copy of this judgment along with Trial Court Records to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

DHA
List No.: 1 Sl No.: 55