HC-KAR

NC: 2026:KHC:61718
CRL.A No. 1045 of 2014

CNR: KAHC010422342014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1045 OF 2014 (C)

BETWEEN:

1. SRI G D ASEEF
   S/O LATE MOIDEEN N
   AGED ABOUT 37 YEARS,
   R/AT MJM 573, KASBA BENGRE,
   MANGALORE TALUK - 575217

2. SRI. ABDUL SAMAD
   S/O ABDUL KHADER
   AGED ABOUT 35 YEARS,
   R/AT SABARABAILU
   HOUSE NO. 108, SONANDOOR VILLAGE,
   BELTHANGADY TALUK - 575217.

...APPELLANTS

(V/O DATED: 03/11/2026 A-2 PRESENT BEFORE COURT THROUGH VIDEO CONFERENCE FROM JAIL,
V/O DATED: 05/11/2026 SRI. PRUTHVEEN KATTIMANI, AMICUS CURIAE FOR A-2,
APPEAL AGAINST A-1 STAND ABATED.)

Digitally signed by LAKSHMINARAYAN N
Location: High Court of Karnataka

AND:

1. STATE OF KARNATAKA
   BY COASTAL SECURITY POLICE STATION
   MANGALORE
   REPRESENTED BY STATE PUBLIC PROSECUTOR
   HIGH COURT BUILDINGS,
   BANGALORE 560001.

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP.)

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CRL.A. FILED U/S.374(2) CR.P.C BY THE ADV., FOR THE APPELLANTS PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED:8/10.9.14 PASSED BY THE PRL.S.J.,/SPL. JUDGE, MANGALORE IN SPL.C.NO.19/2009 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 8(C) R/W SEC. 20(b)(ii)(B) OF NDPS ACT. AND THE APPELLANT/ACCUSED IS SENTECED TO UNDERGO R.I. FOR TWO YEARS EACH AND TO PAY FINE OF RUPEES TEN THOUSAND EACH, IN DEFAULT, SHALL UNDERGO FURTHER R.I. FOR SIX MONTHS EACH. FOR THE OFFENCE P/U/S 8(C) R/W SEC. 20(b)(ii)(B) OF NDPS ACT.AND THE APPELLANTS/ACCUSED PRAYS THAT THEY BE ACQUITTED.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant Nos.1 and 2 who are accused Nos.1 and 2, have preferred this appeal against the judgment of conviction and order on sentence passed by the Prl. Sessions Judge/Special Judge, Dakshina Kannada, Mangaluru, in Special Case No.19/2009 dated 08.09.2014.

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

3. The brief facts leading to this appeal are that the Police Inspector, Coastal Security Police Station,

Mangaluru, laid a charge sheet against accused Nos.1 and 2 for the offence under Section 8(c) read with 20(b)(i) of NDPS Act. It is alleged by the prosecution that on 15.06.2009 at 09:40 am near Seashore at Kasba, Bengre, Mangaluru Taluk, accused No.1 was found in illegal possession of 1.175 kg of ganja and accused No.2 was found in illegal possession of 53 pockets 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.

4. The accused have obtained bail. On hearing the charges, the trial Court has framed the charges against the accused for the alleged commission of offences. Same were read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, prosecution has examined, in all, 5 witnesses as PW1 to PW5, 6 documents were marked as Exhibits P1 to 6 and 5 material

objects were marked as MOs.1 to 5. On closure of prosecution said evidence, statement under Section 313 of Cr.P.C were recorded. Accused have totally denied the evidence of prosecution witnesses, however, they did not choose to lead any defence evidence on their behalf.

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

7. This appeal was preferred by the learned counsel Sri Vishwajith Shetty, and after elevation as Judge of the High Court of Karnataka, this case was not listed from 25.10.2017. Thereafter, this Court has issued notice to the appellants to prosecute this case. Despite service of notice, appellants remained absent and unrepresented. Hence, Smt.P.V. Kalpana was appointed as Amicus Curiae.

8. On 03.11.2026 this Court has received the report as to the death of accused No.1/appellant No.1-G.D.Aseef, who died on 22.07.2017 and the appeal stands abated against appellant No.1.

9. In view of NBW issued by this Court appellant No.2/accused No.2, he was arrested and produced before the Court and was remanded to judicial custody. Since the Amicus Curiae did not appear before this Court, this Court has directed the concerned jail authority to produce appellant No.2. On enquiry, appellant No.2 has submitted that one Sri Ranjith Advocate took his signature on vakalath to prosecute this case. Today the said Ranjith also not filed any vakalath. The Amicus Curiae, Smt. Kalpana.P.V, also remained absent. Hence, after due enquiry at the instance of appellant No.2, Advocate Sri Pruthveen Kattimani, is appointed as Amicus Curiae.

10. Sri Pruthveen Kattimani, Amicus Curiae would submits that the impugned judgment, order of conviction and sentence passed by the trial Court is highly illegal,

unreasonable and opposed to law and facts of the case. The trial Court has committed serious material irregularities and illegalities in appreciating the material evidence available on record. The Investigating Officer has not complied with the mandatory provisions of Section 50 of NDPS Act. The definite defence of the appellants is that the mahazar witnesses are not the independent witnesses. They are stock witnesses. PW2 and PW3 in their cross-examination, have clearly deposed that they were the witnesses in earlier cases also. Therefore, their evidence cannot be believed. However, the trial Court has failed to appreciate this fact. The Investigating Officer has prepared the mahazar-Ex.P1 in the police station and no mahazar has been drawn in the alleged place as stated by the Investigating Officer. The panch witnesses who are the stock witnesses, have falsely deposed before the Court. Their version cannot be accepted for convicting the appellants. PW3 has stated that police had already arrested accused persons when the panchas went to the

spot. The evidence of PW1 to PW3 and PW5 is quite contradictory and the material contradictions found in their evidence disclose that no search and seizure has taken place as contented by the prosecution. PW1 to PW3 and PW5, are the interested witnesses, and the appellants cannot be convicted by the trial Court. The Investigating Officer who headed the raiding party has conducted the alleged search and also seized the material objects. The Investigating Officer himself has conducted the investigation and submitted the charge-sheet against the appellants. There are no direct evidence and the entire evidence is interested versions of PW1 to PW3 and PW5 cannot be relied. On all these grounds, it is sought for allowing this appeal.

11. As against this learned HCGP, Sri K.Nageshwarappa, would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts. Absolutely, there are no grounds to interfere with judgment of conviction and order

on sentence passed by the trial Court and sought for dismissal of the appeal.

12. Having heard the arguments on both sides and perusal of materials, the following points would arise for consideration:

1. Whether appellant No.2/accused No.2 has made out grounds to interfere with the impugned judgment of conviction order and sentence?
2. What order?

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

Point No.1 : in the affirmative.

Point No.2 : As per the final order.

Regarding Point No.1:

14. I have examined the materials placed before this Court.

15. It is the case of the prosecution that on 15.06.2009 at 09:40 am, near seashore at Kasba Bengre Village, Mangalore Taluk, accused were found in illegal possession ganja without any pass or permit, for the purpose of selling the same to general public. Thus, the accused have committed the offence alleged. To substantiate the case of the prosecution, in all, 5 witnesses were examined as PW1 to PW5, 6 documents were marked as Exhibits P1 to P6 and 5 material objects were marked as MOs.1 to 5.

16. This case arise out of Ex.P2-complaint filed by the Police Inspector, Coastal Security Police Station, in which it is stated as under:

> "*ಈ ದಿನ ತಾರೀಖು 15.06.2009 ರಂದು ನಾನು ಠಾಣೆಯಲ್ಲಿರುವಾಗ ಸಮಯ 09.00 ಗಂಟೆಗೆ ಮಾಹಿತಿ ಸಂಗ್ರಹಣೆ ಕರ್ತವ್ಯದಲ್ಲಿ ಹೋಗಿರುವ HC 1371 ಹರೀಶ್ ಎಂಬವರು ಠಾಣೆಯ ದೂರವಾಣಿಗೆ ಕರೆ ಮಾಡಿ ಕರೆಯಲ್ಲಿ ಮಂಗಳೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಬೆಂಗ್ರೆ ಗ್ರಾಮದ ಕಸಬಾ ಸಮುದ್ರ ಬದಿಯಲ್ಲಿ ಇಬ್ಬರು ವ್ಯಕ್ತಿಗಳು ಗಾಂಜಾವನ್ನು ಕೈಯಲ್ಲಿ ಹಿಡಿದು ಮಾರಾಟ ಮಾಡಲು ಗಿರಾಕಿಗಳಿಗಾಗಿ ಕಾಯುತ್ತಿರುವ ವಿಷಯವನ್ನು ತಿಳಿಸಿದ ಮೇರೆಗೆ ಮಾಹಿತಿಯನ್ನು ಠಾಣಾ ದಿನಚರಿಯಲ್ಲಿ ನಮೂದಿಸಿ ಮೇಲಾಧಿಕಾರಿಗಳಿಗೆ ವಿಷಯ ತಿಳಿಸಿ ಇಲಾಖಾ ಜೀಪು KA.20-G-285ನೇದರಲ್ಲಿ ಪಂಚಾಯತುದಾರರು, ಪೊಲೀಸ್ ಉಪ ನಿರೀಕ್ಷಕರು ಹಾಗೂ ಸಿಬ್ಬಂದಿಯವರ ಜೊತೆ ಸದ್ರಿ ಸ್ಥಳಕ್ಕೆ 09.40ಕ್ಕೆ ತಲುಪಿ ಕರ್ತವ್ಯದಲ್ಲಿ ಸದ್ರಿ*

ಸ್ಥಳದಲ್ಲಿ ದೂರದಲ್ಲಿ ನಿಂತಿದ್ದ ಸಿಬ್ಬಂದಿಯವರು ತೋರಿಸಿಕೊಟ್ಟ ಮೇರೆಗೆ ಗಾಂಜಾವನ್ನು ಕೈಯಲ್ಲಿ ಹಿಡಿದುಕೊಂಡು ನಿಂತಿದ್ದ ವ್ಯಕ್ತಿಗಳನ್ನು ಸುತ್ತುವರಿದು ಹಿಡಿದು ವಿಚಾರಿಸಿದಲ್ಲಿ 1) ಜಿ.ಡಿ. ಆಸಿಫ್ (32) ತಂದೆ: ಮೈದಿನ್ ಹಾಗೂ 2) ಅಬ್ದುಲ್ ಸಮದ್ (30) ತಂದೆ: ಅಬ್ದುಲ್ ಖಾದರ್, ಬೆಳ್ತಂಗಡಿ ತಾಲ್ಲೂಕು ಎಂಬುದಾಗಿ ತಿಳಿಸಿದ್ದು ಮತ್ತು ಅವರಲ್ಲಿದ್ದ ಕಟ್ಟಿನ ಬಗ್ಗೆ ವಿಚಾರಿಸಿದಲ್ಲಿ ಇದು ನಿರಾಕಿಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಲು ತಂದಿರುವ ಗಾಂಜಾ ಎಂಬುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ. ಈ ಗಾಂಜಾವನ್ನು ವಶದಲ್ಲಿಟ್ಟುಕೊಳ್ಳಲು ಯಾ. ಮಾರಾಟ ಮಾಡಲು ಪರವಾನಿಗೆಯ ಬಗ್ಗೆ ಕೇಳಿದಲ್ಲಿ ಯಾವುದೇ ಪರವಾನಿಗೆ ಇರದ ಕಾರಣ ಸೊತ್ತು ಹಾಗೂ ಆರೋಪಿಗಳನ್ನು ಮಹಜರು ಮುಖೇನಾ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ಅವರಲ್ಲಿದ್ದ ಗಾಂಜಾವನ್ನು ತೂಕ ಮಾಡಿ ನೋಡಲಾಗಿ 1 ಕೆ.ಜಿ. 175 ಗ್ರಾಂ ಹಾಗೂ 53 ಸಣ್ಣ ಪ್ಯಾಕೆಟ್ ಗಾಂಜಾ ಮತ್ತು ಗಾಂಜಾ ಮಾರಾಟ ಮಾಡಿ ಬಂದ 800.00 ರೂಪಾಯಿ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡ ಸೊತ್ತಿನ ಒಟ್ಟು ಮೌಲ್ಯ 20,390.00 ರೂಪಾಯಿ (ಹಣ ಸೇರಿ) ಆಗಬಹುದು. ಇದನ್ನು ಮುಂದಿನ ಕ್ರಮದ ಬಗ್ಗೆ ಠಾಣೆಗೆ 12.15 ಗಂಟೆಗೆ ಬಂದು ಠಾಣೆಯಲ್ಲಿ ಮೊಕದ್ದಮೆ ನಂಬ್ರ 02/2009 ಕಲಂ 8(e) R/w 20(b)(i) NDPS ಕಾಯ್ದೆ 1985 ರಂತೆ ಪ್ರಕರಣ ದಾಖಲಿಸಿ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲಾಗಿದೆ ಎಂಬ ಸಂಕ್ಷಿಪ್ತ ಸನ್ನಿಧಿಯಲ್ಲಿ ಅರಿಕೆ."

17. On the basis of this complaint, case was registered in Crime No.02/2009 against accused for the offence punishable under Section 8(c) read with Section 20(b)(i) of NDPS Act, 1985.

18. During the pendency of the appeal, appellant No.1/accused No.1 is reported to be dead and the appeal against appellant No.1 stands abated. According to the case of the prosecution, accused No.1 was found in possession of 1.175 Kg/grams of Ganja. In this regard that

there is no need to discuss as to the alleged act of accused No.1, as the case against him stands abated.

19. With regard to accused No.2/appellant No.2 is concerned, it is the case of the prosecution that the Investigating Officer has seized 53 small pockets of Ganja from his possession under Exhibit P1 mahazar dated 15.06.2009. The Investigating Officer, as per the mahazar disclosed that the 53 pockets of Ganja worth of Rs.1590/- (Rs.30/- per each pocket). The Investigating Officer has not sent all these packets for chemical examination. Out of 53 packets, the Investigating Officer has sent only 5 packets for examination and Exhibit P4, the report issued by the Chemical Examiner to the Government of Karnataka, reveals that there are presence of cannabis detected in the samples.

20. It is also stated in the mahazar that the Investigating Officer has seized Rs.800/- under mahazar-Ex.P1. The Investigating Officer has not specifically stated from whom possession Rs.800/- was seized. After

preparing this mahazar-Exhibit P1 and seizure of the properties, the Investigating Officer has not inserted the same in Property Register. The Investigating Officer has not complied the mandatory provisions of Section 50 of Narcotic Drugs and Psychotropic Substances Act and also Section 102 of Code of Criminal Procedure, 1973. The seizure mahazar is also not produced before the Magistrate along with the Mahazar. Without obtaining permission from the concerned authority, the Investigating Officer has sent the seized sample packets for chemical examination. The Investigating Officer has not obtained any permission from the Jurisdictional Magistrate to retain the seized property till production of the same before the Magistrate. Since the Investigating Officer has failed to comply the mandatory provisions of Section 50 of NDPS Act, 1985 and Section 102 of Code of Criminal Procedure, 1973, it is not possible to say that the Investigating Officer has seized 53 pockets of Ganja from the possession of accused No.2 under Exhibit P1-mahazar. The trial Court

has not assigned any reasons as to the non-compliance of mandatory provisions of Section 50 of NDPS Act, 1985 and also Section 102 of Code of Criminal Procedure, 1973. Accordingly, appellant No.2 has made out grounds to interfere with the impugned judgment of conviction and order on sentence. Hence, I answer Point No.1 in the ***Affirmative***.

Regarding Point No.2:

22. For the aforestated reasons and discussions, I proceed to pass the following:

ORDER

i. Appeal is allowed.

ii. The judgment of conviction dated 08.09.2014 and order on sentence dated 10.09.2014 passed by the Prl. Sessions Judge/Special Judge, Mangalore in Special Case No.19/2009, is set aside.

iii. Appellant No.2/accused No.2-Abdul Samad is acquitted of offence punishable under

Section 8(c) read with 20(c)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985.

iv. The trial Court is directed to refund the fine amount, if any, deposited by appellant No.2.

v. The Registry is directed to send a letter to the concerned Jail Authority to release appellant No.2, if he is not involved in any other cases.

Registry is directed to pay an amount of Rs.10,000/- to Sri Pruthveen Kattimani, Amicus Curiae.

Sd/-
(G BASAVARAJA)
JUDGE

KBM
List No.: 1 Sl No.: 75