HC-KAR

NC: 2026:KHC:62841
CRL.A No. 1315 of 2015

CNR: KAHC010445742015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1315 OF 2015 (C)

BETWEEN:

ALWIN PINTO
AGED ABOUT 35 YEARS,
S/O LIGORY PINTO,
R/AT NO.101/1,
AMBEDKAR COLONY,
KANDAVRNA KINNIKAMBALA POST,
MANGALURU TALUK,
MANGALORE CORPAORATION.

...APPELLANT

(BY SRI. DILIP KUMAR K.,ADVOCATE)

AND:

Digitally signed by SUMA B N
Location: HIGH COURT OF KARNATAKA

STATE BY P.I. COASTAL
SECURITY POLICE STATION,
MANGALURU.

...RESPONDENT

(BY SRI. SPP.,ADVOCATE)

THIS CRL.A. IS FILED U/S 374(2) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED:13.10.2015, PASSED BY THE PRL.SESSIONS JUDGE/ SPL. JUDGE, D.K., MANGALURU, IN SPL.C.NO.16/2012- CONVICTING THE APPELLANT/ACCUSED FOR THE CONTRAVENTION OF SEC.8(c) AND FOR THE OFFENCES P/U/S20(b)(ii)(b) OF NDPS ACT AND ETC.

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 appellant has preferred this appeal against the judgment of conviction and order on sentence dated 13.10.2015 passed in Special Case No.16/2012 by the Principal Sessions Judge/Special Judge, Mangaluru (for short, 'the trial Court').

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, laid a charge sheet against the accused for the offence under Section 8(c) read with Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substance Act (NDPS Act). It is alleged by the prosecution that on 19.12.2011 at about 09:45 am, the accused was found in illegal possession of 1.100 kgs., of Ganja valued at Rs.30,000/- without any permit or pass at a place called Ganesh Katte of Thannirbhavi, Panambur Village. The accused was in possession of Ganja with an intention to sell the

same to the general public. Thus, the accused has committed the alleged offences.

4. After filing charge sheet, case was registered and the accused appeared before the Court and enlarged on bail. On hearing, the trial Court has framed the charges for the alleged offence. Same was 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, in all, 5 witnesses were examined as PWs.1 to 5; 9 documents were marked as Exs.P1 to P9 and 3 material objects were marked as MOs.1 to 3. On closure of prosecution side evidence, statement under Section 313 was recorded. Accused has totally denied the evidence of prosecution witnesses. However, he did not choose to lead any defence evidence on his behalf.

6. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Section 20(b)(ii)(B) of NDPS Act and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.10,000/-. Being

aggrieved by the said judgment, the appellant has preferred this appeal.

7. The learned counsel for the appellant would submit that the judgment of conviction and sentence passed by the Learned Sessions Judge is illegal, invalid, contrary to law, facts, evidence on record and probabilities of the case. The prosecution is guilty of the suppression of material evidence and has not come forward with a true version of the incident. The prosecution completely failed to prove its case without any reasonable doubt. PW3-Abdul Reheman Munir and PW5-Shashidhara have not supported to the case of the prosecution. PW1 and PW2 are the police officials. Police officials intentionally fixed the appellant in this case. The Investigating Officer has not complied the mandatory provisions of Sections 42, 50 and 52A of NDPS Act and the trial Court has not properly appreciated the evidence on record in accordance with law and sought for allowing this appeal.

8. To substantiate his argument, he relied on the decision of the High Court of Rajasthan in the case of ***Aladdin and Anr. Vs. State of Rajasthan*** reported in ***2016 CRL.L.J. 3173*** and

decision of the High Court of Patna in the case of ***Sonu Kumar S/O Raju Ram Vs. State of Bihar*** in ***Crl.A.No.453/2018.***

9. As against this, the learned HCGP Sri. K.Nageshwarappa, would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and sought for dismissal of this appeal.

10. Having heard the arguments on both sides and perusal of the materials placed before this Court, the following points would arise for my consideration:

i. Whether the appellant/accused has made out grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court?

ii. What order?

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

Point No.1 - Affirmative

Point No.2 - As per final order

Regarding Point No.1:-

12. I have examined the materials placed before this Court. It is the case of the prosecution that on 19.12.2011 at about 09.45 a.m., the accused was found in illegal possession

of 1.100 Kgs., of Ganja valued at Rs.30,000/- without any permit or pass. The accused was in possession of Ganja with an intention to sell the same to general public. Thus, the accused has committed alleged offences. To prove the guilt of the accused, prosecution has examined five witnesses as PW.1 to PW.5.

13. Out of the above five witnesses, PW.3-Abdul Reheman Munir and PW.5-Shashidhara said to be the attesters of the Ex.P1-Mahazar have not supported the case of the prosecution. PW.1-Hemaraja, is Police Constable. PW.2-Mukunda Nayak, is Investigating Officer. PW4-Smt. B.C. Shobha, is the Chemical examiner, who has deposed as to the issuance of report as per Ex.P5.

14. According to the case of the Investigating Officer, PW.2-Mukunda Nayak, that on 19.12.2011, he along with the staff were on rounds in the official Jeep, at about 09:45 a.m., they reached Ganesh Katte of Thannirbhavi, Panambur Village and a cow suddenly came across the road. The driver of the jeep has slowed down its speed and on seeing the jeep slowing down, a person who was by the side of the road started running. They

suspected his behavior and directed his staff to chase and caught hold of him. Accordingly, Hemaraja-PW.1 and Lokesh, chased the accused and apprehended him. The accused was holding a blackish-blue plastic bag in his hand and was carrying Ganja in it for the purpose of selling the same to the general public. Further, PW1 has seized the same in the presence of panchas. He has also seized Rs.600/- cash.

15. The Investigating Officer has not seized the alleged plastic bag which was in the possession of the accused. The Investigating Officer has not explained anything as to non-production of the said plastic bag.

16. PW2 has apprehended the accused on 19.12.2011 at 09:45 a.m. On the same day, Investigating Officer has conducted Mahazar between 09:55 and 11:50 a.m. in presence of panchas. But, panchas have not supported the case of the prosecution.

17. PW2- Investigating Officer has deposed that he has issued the notice to the accused under Section 50 of NDPS Act as per Ex.P4. Accused has given consent to him to search his

body as per Ex.P4(C). In Ex.P1-Seizure Mahazar also, the Investigating Officer has not whispered as to the original notice said to have been issued to the accused under Section 50 of NDPS Act. Further, the document Ex.P4 has not been produced before the Court along with the FIR. If really, the Investigating Officer has complied with the mandatory provision of Section 50 of NDPS Act, he would have produced alleged Ex.P4 at the time of filing FIR along with Mahazar. But he has not done so. Therefore, it will create reasonable doubt as to the compliance of Section 50 of NDPS Act.

18. After seizure of the property, Investigating Officer has not inserted the same in the Property Register and submit the report to the Magistrate as required under Section 50(5) of the NDPS Act and also Section 102 of the Cr.P.C. Further, Investigating Officer has also not complied with the provision of Section 100 of Cr.P.C.

19. In this regard, it is relevant to mention here as to the decision of the Hon'ble Apex Court in the case of ***Vijaysinh Chandubha Jadeja Vs. State of Gujarat*** reported in ***(2011)***

1 SCC 609 wherein at paragraph No.22 of the judgment, the Hon'ble Apex Court has observed as under:

> *" 22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in Re Presidential Poll14, it is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the*

search proceedings, it may verily strengthen the prosecution as well."

20. Further, the Hon'ble Apex Court in the case of ***Arif Khan @ Agha Khan Vs. State of Uttarakhand*** in Cril.Appeal No.273/2007, decided on 27.04.2018, wherein at paragraph Nos.28 to 30 has observed thus:

" 28. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "Charas" was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "Charas" from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "Charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

29. Though, the prosecution examined as many as five police officials (PW-1 to PW-5) of the raiding police party but none of them deposed that the search/recovery was made in presence of any Magistrate or a Gazetted Officer.

30. For the aforementioned reasons, we are of the considered opinion that the prosecution was not able to prove that the search and recovery of the contraband (Charas) made from the appellant was in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and, in this case, we have found that the prosecution has failed to prove the compliance as required in law, the appellant is entitled to claim its benefit to seek his acquittal. "

21. The Investigating officer has not complied with the mandatory provisions of Sections 42 and 50 of NDPS Act and has also not complied with the provision of Sections 100 and 102 of Cr.P.C.

22. Considering the facts and circumstances of the case and also keeping in mind the aforesaid decisions, I am of the opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Hence, I answer point no.1 in the affirmative.

Regarding Point No.2:-

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

ORDER

(i) The appeal is ***allowed***;

(ii) The impugned judgment of conviction and order on sentence passed by the Principal Sessions Judge/Special Judge, Mangaluru, in S.C.No.16/2012 dated 13.10.2015 is hereby set aside;

(iii) The appellant/accused is acquitted of the offence under Section under Section 20(b)(ii)(B) of NDPS Act;

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

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

Registry is directed to send the copy of this judgment along with TCR to the trial Court.

SD/-
(G BASAVARAJA)
JUDGE

RL
List No.: 1 Sl No.: 26