

KACB010003092022



Presented on : 11-02-2022
Registered on : 11-02-2022
Decided on : 20-06-2026
Duration : 04 years 04 months 09 days

IN THE COURT OF PRL. DISTRICT AND SESSIONS JUDGE,
AT : CHIKKABALLAPURA

Dated this the 20th day of June 2026

Present:

Sri. T.P.RAMALINGE GOWDA,
B.Sc., LL.M., M.B.A.
Principal District & Sessions Judge,
Chikkaballapura.

SPECIAL CASE NO.19 OF 2022

COMPLAINANT/S: State by:
Chintamani Rural Police Station,
Chintamani.
(Represented by Public Prosecutor)

//Versus//

ACCUSED: Venkataramareddy
s/o Peddanna,
aged about 39 years,
r/at A.Hosahalli village,
Chintamani taluk,
Chikkaballapura District.
(Represented by Sri.R.G., Advocate)

TABULATION OF EVENTS

1. Date of Commission of offence	:28.06.2021
2. Date of report of offence	:28.06.2021
3. Date of arrest of accused	: -

4. Date of release of accused from
Judicial custody : -
5. Period of judicial custody : Year/s Month/s Day/s
- - -
6. Name of the complainant : Narayanaswamy K., P.S.I.
7. Nature of offences complained : Sections 20(a) & (b) of
Narcotic Drugs and
Psychotropic Substances
Act, 1985
9. Date of commencement of recording of evidence : 16.09.2025
10. Date of closing of evidence : 11.02.2026
11. Date of Judgment : 20.06.2026
12. Opinion of the Judge : As per final order

J U D G M E N T

The Sub-Inspector of Police, Chintamani Rural Police station has laid down the charge-sheet against the accused in Crime No.293/2021 of their police station alleging that he has committed the offence punishable under Section 20(a) & (b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Herein after referred in short as '**NDPS Act**').

2. The case of the prosecution in brief as alleged in the charge sheet is that 28.06.2021 at about 10 a.m. the complainant has received credible information about cultivation of four ganja plants by the accused in the land belongs to Cw.11 and stocking the same in a shed by harvesting. Accordingly, when he has conducted raid along with his staff and panchas at about 12 noon they found ganja

measuring 1 kg 520 grams valued at Rs.30,000/- in a shed belongs to Cw.11. With these allegations charge sheet came to be filed against accused for the offence punishable under Sections 20(a) & (b) of NDPS Act.

3. After receipt of the charge-sheet, Special Case No.19/2022 was registered and took cognizance of the offence. Accused was enlarged on bail.

4. During the course of trial, to prove its case prosecution has examined 8 witnesses out of 13 charge sheeted witnesses as Pw.1 to Pw.8 and got marked 17 documents at Ex.P1 to Ex.P17 and four material objects at MO.1 and MO.2. At the time of cross-examination of Pw.5 the learned counsel for the accused has got marked Ex.D1 to D3.

5. Accused has been subjected for examination as required under Section 313 of Cr.P.C. in order to enable him to offer any plausible explanation about the incriminating evidence and circumstances brought against him during trial by the prosecution. Accused has denied the entire case of the prosecution as false.

6. Heard the arguments of both sides and perused the materials available on record.

7. Having perused the materials available on record on the prevailing legal scenario, the points that arise for my consideration are:-

1) Whether the prosecution proves beyond reasonable doubt that the accused has cultivated four ganja plants in the land belongs to Cw.11 Avulareddy without any valid license or permit with an intention to sell the same and stocked the same in a shed after harvesting and on 28.06.2021 at about 12 noon when the complainant has conducted raid on the said place along with his staff and panchas, they found 1 kg 520 grams of ganja worth Rs.30,000/- and thereby accused has committed an offence punishable under Sections 20(a) & (b) of Narcotic Drugs and Psychotropic Substances Act, 1985?

2) What order?

8. My findings on the above said points are as under;

Point No.1: ***In the Negative.***

Point No.2: ***As per final order for the following;***

REASONS

9. **Point No. 1:** During the course of arguments learned ***Public Prosecutor*** has vehemently argued that except spot mahazar

witnesses, all other prosecution witnesses have supported the case of the prosecution in its entirety. The accused is unable to elicit any contradictions and omissions in the case of the prosecution. Since the prosecution has discharged its initial burden, the presumption available under law shall be drawn against the accused. Accused has neither adduced his defence evidence or offered any plausible explanation to rebut the presumption available against him under law. Consequently, it is argued that the prosecution has proved the case beyond reasonable doubts and brought home the guilt of the accused and thereby prays to convict the accused.

10. Percontra, **Sri R.G.**, learned counsel for accused has argued with all vehemence that the case of the prosecution is not believable as there is lot of inconsistency in the case of the prosecution and there is no corroboration in the evidence of witnesses. Further it is argued that the accused is not the owner of the land on which the raid was conducted. Further the prosecution has not examined the owner of the said land who has been cited as Cw.11 in the charge sheet. Both the spot mahazar witnesses Pw.2 and Pw.6 have turned hostile to the case of the prosecution. As such, viewed from any angle the prosecution has utterly failed to prove its case and thereby serious doubts are arise

in the prosecution case. Accordingly prays to acquit the accused by extending the benefit of doubt.

11. Before proceeding to appreciate the case of the prosecution it is worthy to mention the cardinal principles of criminal justice system. As has been held by the Hon'ble Apex Court in case of **Kaliram v. State of Himachalpradesh**; reported in **1973 AIR 2773**, **firstly**, an accused shall be presumed to be innocent unless guilty is proved beyond reasonable doubt. **Secondly**, if any doubt is arises in the case of the prosecution then the benefit of doubt shall be extended to the accused and **thirdly**, if two views are possible on the evidence adduced by the prosecution, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to accused shall be adopted. In another land mark judgment the Hon'ble Apex Court has enunciated fourth principle which is required to be appreciated while dealing with the criminal cases, in case of **Sujit Biswas vs State of Assam** reported in **AIR 2013 SC 3817** that ***"In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. The court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof."***

12. By keeping in mind the rival arguments and the aforesaid cardinal principles of criminal justice system let me proceed to examine the case of the prosecution in the light of the defence set up by the accused.

13. To bring home the guilt of the accused prosecution has relied upon the oral evidence of Pw.1 to 8 coupled with documentary evidence marked at Ex.P1 to 17 and one material objects at M.O.1 and M.O.2.

14. Pw.2 Manjunatha and Pw.6 Shivappa, the independent panch witness to the spot mahazar marked at Ex.P5 have turned hostile to the prosecution case. Except identifying their signatures on the spot mahazar at Ex.P5, they have not at all deposed anything worthy in support of the prosecution case. They have deposed that they are not aware of the contents of spot mahazar. Nodoubt, they have been treated as hostile and they were subjected for cross-examination by the learned Public Prosecutor, but they have denied to admit the suggestions put by the learned Public Prosecutor. As such their entire evidence would not comes to the aid of the prosecution in proving the guilt of the accused. Because their evidence shows that they have put their signatures to the spot mahazar at Ex.P5 at police

station and they have not deposed anything about act said and done at the time of raid.

15. Pw.1 Gokul who is a panch witness to raid/seizure mahazar marked at Ex.P2. In his examination-in-chief he has deposed about conducting of raid on the land bearing Sy.No.17 belongs to one Avulareddy, cultivation of four ganja plants by the son-in-law of said Avulareddy by name Venkataramareddy, who is none other than the accused. Further he has also deposed about storing of the said ganja plants in a shed after harvesting the said plants by the accused and seizure of the said ganja plants. The said ganja plants weighing about 1 kg 520 grams. He has identified his signature in Ex.P2 raid mahazar and Ex.P1 notice issued to panchas. But in the cross-examination he has stated that Cw.1 Narayanaswamy is not seen the photographs marked at Ex.P3. In the said photographs he along with panchayath secretary, village accountant and two police officials are present, but he does not know the names of said police officials. Further the learned counsel for the accused got marked two photographs as per Ex.D1 and D2 in the cross-examination of this witness. This witness has admitted that in the photographs cutting of ganja plants is seen. Further admitted that he does not know who had kept the ganja plants in the shed after cutting the said ganja plants. Further admitted that as

per Ex.P4 R.T.C. extract measurement of Sy.No.17 is not shown. Further the sketch about sanction of lands in the said survey number to various persons is not produced before the court. Further admitted that only if he see the said sketch, then only he can identify the owner of the said land. He came to know through the police that the said plants were grown in the land of one Avulareddy. Further admitted that no panchanama was conducted in respect place shown in Ex.D1 and D2 photographs and there is no document relating to ownership of the shed in which the alleged ganja was kept. Further admitted that no license was given to construct the said shed. Except this witness the prosecution has not examined any other witness to Ex.P2 raid/seizure mahazar.

16. In view of the same in the absence of corroborative evidence of independent witnesses, this court has no other option except to consider the evidence of official witnesses i.e., Pw.3, 4, 5, 7 and 8. Pw.3 is the FSL officer who has deposed in support of prosecution case. Her evidence will be considered infra. Pw.5 is the first informant who has deposed regarding receipt of credible information and conducting raid and recovery of ganja plants. Pw.8 is the P.S.I. who registered the case against the accused in crime No.293/2021 and submitted the FIR to court and his official superior.

Pw.4 is the A.S.I. who has accompanied Pw.5 at the time of raid and Pw.7 is the Investigating Officer.

17. The evidence of Pw.5 P.S.I. Narayanaswamy shows that on 28.08.2021 at about 10 a.m. he has received the credible information about cultivation of ganja by the accused in the land of his father-in-law at A.Hosahalli village, Chintamani taluk and storing of the said plants after harvesting in a shed and after informing the said fact to his official superior he went to the said place along with his staff. On visiting the said place they found four ganja plants in a shed and accordingly, he has prepared a report as per Ex.P7. Further he has also deposed about the notice issued as per Ex.P1 to the panchas.

18. On perusal of Ex.P1 it appears that the same is record of reasons prepared under Section 41 of NDPS Act. Here it is worthy to mention that record of reasons are to be recorded under Section 42(1) and not under Section 41 of NDPS Act. Because Section 41 speaks about issue of warrant by the Magistrate or by the Authorized Superior Officer for search and authorizing to detain any person or any contraband substances. When the matter stood thus, recording of reasons under Section 41 is seems to be not proper and correct. Nodoubt, Section 42(1) empowers the Investigating Officer to venture upon investigation without obtaining warrant or authorization as

required under Section 41, provided by preparing the records of reasons in order to avoid escape of accused and to prevent or cause destroy of contraband due to the delay in obtaining of authorization or warrant under Section 41. However, as could be seen from the recitals of records of reasons prepared by Pw.5 at Ex.P1, the necessary requirement of Section 42(1) is mentioned, even though wrong provision of law was quoted.

19. Despite the aforesaid act said and done by Pw.5 would prima facie goes against the mandatory provisions of law as envisaged under Section 42 of NDPS Act. Because under sub-section (1) it is mandated that ***“if he has reason to believe from the personal knowledge or information given by any person and taken down in writing”***. Again under sub-section (2) it is mandated that ***“where an officer takes down any such information in writing under sub-section (1) and conducted raid after recording the reasons without obtaining search warrant from the Magistrate or the higher officials, he shall send copy thereof to his immediate official superior within 72 hours”***. To elaborate immediately after receiving the credible information about commission of offence under the provisions of NDPS Act, the officer must be taken down the said information in writing and then after investigation, detailed report

must be furnished to his immediate superior officer within 72 hours. But in this case, Pw.5 has stated that he has orally informed the said fact to Dy.S.P. Further he has not deposed anything about submission of the report to his immediate superior within 72 hours. In the result, as per the settled position of law violation of provisions of section 42 would leads to the recovery is illegal and thereby leads to the acquittal of accused even though, such proceedings are not vitiated.

20. In this respect reliance can be placed to the judgment of Hon'ble Apex Court in the case of ***Boota Singh & others v. State of Haryana***, in ***Criminal Appeal NO.421 of 2021***, wherein their lordships have held at para 29 that;

“29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Section 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section 42(1) proviso even an argument based on substantial compliance is raised there in total non-compliance with Section 42(1) proviso. As observed above, Section 43 being not attracted, search was to be conducted after complying with the provisions of

Section 42. We thus, conclude that the High Court has rightly held that non-compliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order”. (Emphasis added)

In view of aforesaid ratio and also on perusal of the admissions of Pw.5 in his cross-examination that he has not taken down the information received by him in writing and he has not informed the said fact to his official superior it is ample clear that he has not complied the mandatory provisions of Section 42 of NDPS Act.

21. Further in his cross-examination Pw.5 admitted that he is not seen in Ex.D1 and D2 photographs and he has not produced CD and certificate under Section 65(B) of Evidence Act in respect of the said photographs. Consequently, photos which are secondary evidence are inadmissible in the absence of certificate under Section 65(B) of Evidence Act. Further this witness has not deposed anything about the ownership of the land in which the alleged ganja plants were grown by the accused. Again, although he has deposed that he has not filed charge sheet, he has admitted his signature on the charge sheet which is marked as Ex.D3. From this it transpires that, Pw.5 blowing hot and cold together, which would amounts to giving false evidence. In otherwords, although he has investigated the case and

filed the charge sheet as per Ex.D3, he has deposed falsely that he has not filed the charge sheet.

22. Pw.4 A.S.I. C.V.Chandrashekar has accompanied Pw.5 at the time of raid. In his examination-in-chief he has deposed about the raid conducted on 28.06.2021 at about 10 a.m. on the land bearing Sy.No.17 and seizure of four ganja plants grown in the said land. This witness has also not adduced anything about the ownership of the said land and the relationship between the owner of the said land with the accused person.

23. Pw.7 P.I. Naresh Naik has deposed about subjecting of seized ganja to P.F.No.216/2021, Correctness Certificate obtained by the Magistrate as per Ex.P11 by giving requisition as per Ex.P10. Further he has deposed about issuance of certificate under Section 65(B) of Evidence Act in respect of four photographs which are marked at Ex.P12 and the said certificate is marked as Ex.P13. Further deposed about collecting sample ganja by subjecting it to P.F.No.219/2021 and sending the same for FSL examination as per Ex.P15 requisition and sending the remaining ganja to DAR by writing a letter as per Ex.P16.

24. On perusal of the evidence of Pw.1, 4, 5, 7 and 8 it is ample clear that the accused is not the owner of the land in which the alleged

ganja was grown. Though Pw.1 has deposed that he is the son-in-law of one Avulareddy, who is the owner of the said land, but he has not produced any documents to prove the relationship of the accused with said Avulareddy. Further on perusal of Ex.P4 R.T.C. extract it appears that the land bearing Sy.No.17 stands in the name of several kathedars. But the total extent of the said land is not shown in the said document. Further it appears that one Avulareddy s/o late Narayanappa is shown to be in possession of 2 acres of land. But as per the case of the prosecution he has not grown ganja in the said land and it is the accused who has grown ganja in the said land. Though prosecution has cited said Avulareddy as Cw.11 in the charge sheet, he has not been examined as witness before the court. Therefore, the prosecution has utterly failed to prove that the place in which the alleged ganja plants were grown was really cultivated by the accused. Not only that, the relationship between accused and one Avulareddy who is said to be the owner of the land in which the alleged ganja is grown is also not established.

25. Under these factual scenario evidence of Pw.3 FSL officer to the effect that the alleged contraband seized is ganja substance as per report at Ex.P6 and correctness certificate issued by the Magistrate at Ex.P11 along with photographs taken at the time of issuing

correctness certificate as per Ex.P12 would not come to the aid of prosecution. Because unless the prosecution has discharged its initial burden that the place where the ganja plants were grown is standing in the name of the accused or he is in the lawful possession of said property, this court is not bound to draw the presumption against the accused either regarding to consider the correctness certificate as primary evidence or regarding cultivation of ganja plants by the accused in the said land.

26. Upon marshaling of oral and documentary evidence, discrepancies made out above would undoubtedly demonstrate that both the raiding party and the Investigating Officer have not bothered to prove that the place where the ganja plants were grown is standing in the name of the accused. In the result, neither the evidence of panchas nor the evidence of other prosecution witnesses including the Inventory and correctness certificates would not come to the aid of prosecution in proving its case. As noted supra, since the prosecution has failed to discharge its initial burden, absolutely there is no question of drawing presumption as available under the provisions of NDPS Act against the accused person. Consequently, it can be held that prosecution has miserably failed to prove its case and thereby

accused is found not guilty. ***Accordingly, I answer point No.1 in the negative.***

27. **Point No.2:** In view of my findings on point No. 1, I proceed to pass the following;

ORDER

Acting under Section 235 (1) of Cr.P.C. the accused is acquitted for the offence punishable under Section 20(a) and (b) of NDPS Act.

Bail bond and surety bond executed by the accused stands cancelled and he is set at liberty.

The bail bond and surety bond executed by the accused under Section 437-A of Cr.P.C. will remain in force for the period as mentioned in the said Section.

M.O.1 and 2 two ganja packets shall be returned to the competent authority/Drugs disposal committee for disposal in accordance with law after appeal period is over with a direction to submit a compliance report about handing over the same to the disposal committee along with documents for having received the same.

(Dictated to the STENOGRAPHER GRADE-I directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the 20th day of June 2026.)

(T.P.RAMALINGE GOWDA)
Prl. District and Sessions Judge,
Chikkaballapura.

APPENDIX**Witnesses examined for Prosecution:-**

PW.1 : Gokul
PW.2 : Manjunatha
PW.3 : S.Suma
PW.4 : C.V.Chandrashekar
PW.5 : Narayanaswamy K
PW.6 : Shivappa
PW.7 : Naresh Naik
PW.8 : Subramani V

Witnesses examined on behalf of defence: -

- N I L -

List of documents exhibited on behalf of Prosecution:-

Ex.P1 : Notice given to Pw.1
Ex.P1(a) : Signature of Pw.1 on Ex.P1
Ex.P2 : Raid/seizure mahazar
Ex.P2(a) : Signature of Pw.1 on Ex.P2
Ex.P3 : Six photographs
Ex.P4 : R.T.C. extract
Ex.P5 : Spot mahazar
Ex.P5(a) : Signature of Pw.2 on Ex.P5
Ex.P5(b) : Signature of Pw.5 on Ex.P5
Ex.P5(c) : Signature of accused on Ex.P5
Ex.P5(d) : Signature of Pw.6 on Ex.P5
Ex.P6 : FSL report
Ex.P6(a) : Signature of Pw.3 on Ex.P6
Ex.P7 : Report of Pw.5 Narayanaswamy
Ex.P7(a) : Signature of Pw.5 on Ex.P7
Ex.P8 : Requisition letter of Pw.5 addressed to
Tahasildar, Chintamani.
Ex.P8(a) : Signature of Pw.5 on Ex.P8
Ex.P9 : Requisition letter of Pw.5 addressed to
Dy.S.P., DAR cell, Chikkaballapura
Ex.P9(a) : Signature of Pw.5 on Ex.P9
Ex.P10 : Requisition letter of Pw.7 along with
intimation letter
Ex.P10(a) : Signature of Pw.7 on Ex.P10
Ex.P11 : Annexure I & II along with correctness
certificates

Ex.P11(a)	:	Signature of Pw.7 on Ex.P11
Ex.P12	:	Four photographs taken during the time of issuing Correctness Certificate
Ex.P13	:	Certificate under Section 65-B of Indian Evidence Act
Ex.P13(a)	:	Signature of Pw.7 on Ex.P13
Ex.P13(b)	:	Signature of W.P.C.No.479 on Ex.P13
Ex.P14	:	FSL acknowledgment
Ex.P14(a)	:	Signature of Pw.7 on Ex.P14
Ex.P15	:	Requisition letter of Pw.7 along with intimation letter
Ex.P15(a)	:	Signature of Pw.7 on Ex.P15
Ex.P16	:	True copy of letter addressed to Dy.S.P. DAR unit, Chikkaballapura
Ex.P17	:	First Information Report
Ex.P17(a)	:	Signature of Pw.8 on Ex.P17

List of documents exhibited on behalf of defence:-

Ex.D1 & D2	:	Two photographs
Ex.D3	:	Charge sheet
Ex.D3(a)	:	Signature of Pw.5 on Ex.P3

Material objects marked for Prosecution:-

M.O.1	:	One Ganja packet
M.O.2	:	One Ganja packet

(T.P.RAMALINGE GOWDA)
Prl. District and Sessions Judge,
Chikkaballapura.