

IN THE COURT OF SESSIONS, PALAKKAD DIVISION
Present : Shri.D.Sudheer David, Additional Sessions Judge-II

Tuesday, the 31st day of March, 2026
10th day of Chaithra, 1948 S.E

SESSIONS CASE No. 223/2018

(Crime No.410/2018 of Town North Police Station, Palakkad)

Complainant : State of Kerala, Rep. by the Inspector of Police,
Town North Police Station, Palakkad
By Adv. Shri. Sreenath Venu,
Special Public Prosecutor, Palakkad

Accused : 1. Rafeek (No More)
2. Muhammed Ansar Ali (Split up)
3. Muhammed Shafi, aged 21/2018, S/o.
Aboobacker, Maniyanpara, Thottakara,
Tholanoor, Kuthanoor, Palakkad.
A3 by Shri.Yasser Arafath

Charge Under Section : Under Sections 20 (b) (ii) (B) & 29 of NDPS
Act

Plea of the accused : Not guilty

Finding and Sentence : Accused is acquitted under Section 258 (1) of
BNSS for the offence under Section 20(b) (ii)
B & 29 of NDPS Act. He is set at liberty for
that offence. His bail bonds stands cancelled.

Description of the accused :

Name	Father's Name	Occupation	Age	Residence
Rafeek	--	--	--	(No More)
Muhammed Ansar Ali	--	--	-	--
Muhammed Shafi	Aboobacker	--	21/2018	Maniyanpara, Thottakara, Tholanoor, Kuthanoor, Palakkad.

DATE OF :

Occurrence	: 08.03.2018
Final Report	: 23.04.2018
Apprehension	: 08.03.2018
Released on bail	: 09.08.2018 - A3
Commitment	: 06.04.2018
Commencement of trial	: 23.01.2024
Close of trial	: 30.03.2026
Sentence	: 31.03.2026

This case has been finally heard on 30.03.2026 and this court on 31.03.2026 delivered the following.

JUDGMENT

This is a case based on the Final report filed by Inspector of Police, Town North Police Station, against the accused alleging offence u/s 20 (b) (ii) B & 29 of Narcotic Drugs and Psychotropic Substance Act 1985 (hereinafter referred to in short as 'the N.D.P.S Act')

2. The case of the prosecution in brief is that, accused, who is arrayed as the third accused, along with the first and second accused was found possessing 4.100 kilograms of ganja, by carrying in a motor bike, bearing number KL 51 E 5880, ridden by the first accused and others were pillion riders, with the accused keeping it in the shoulder bag slung on his back and caught red handed near to Kallekkad AR Camp on the evening of 8.3.2018 at 6.00 PM, contravening the provisions of NDPS Act.

3. On detecting the offence, a crime was duly registered after complying with the initial formalities and on the investigation that followed a final report was filed, in

which cognizance under Section 20 (b) (ii) B & 29 of NDPS Act was taken and process issued to the three accused persons, in which they appeared and enlarged on bail in the crime stage, upon which they were allowed to continue in this proceedings.

4. Thereafter learned Special Public Prosecutor opened up his case by describing the charge levelled against the accused and stating the evidences, he proposed to prove their guilt.

5. The meantime, first accused is reported dead and the proceedings against second and third accused continued with.

6. Thereafter basing on the submission of Learned Special Public Prosecutor and the prosecution records and also after hearing both sides, it is satisfied that there are grounds to presume that accused along with second and third accused had committed an offence, which is triable by this Court. Hence, charges against the second and third accused under Section 20 (b) (ii) B & 29 of NDPS Act was framed, read over and explained to them, to which they pleaded not guilty and claimed to be tried.

7. Prosecution, then examined PW1 to PW7 and marked Exts. P1 to P21, P8 and 11 series and MO1 Series and MO2.

8. During the stage of the proceedings, second accused absconded and the case against him split up and trial continued with against the third accused.

9. On the closure of the prosecution evidence accused was questioned u/s 351(i) (b) BNSS, in which he denied all the incriminating circumstances appearing in the evidence of the witnesses and pleaded that he is innocent and that he is falsely implicated in this case.

10. Thereafter, on hearing the prosecution and defence under section 255 of BNSS it was found to be not a case of 'no evidence' and hence the trial proceeded with by calling upon the accused to enter into his defence by adducing evidence, but he did not adduce any.

11. Heard both sides.

12. The points raised for consideration are: -

1. Whether the third accused, along with the first and second accused possessed 4.100 kilograms of ganja, by carrying in a motor bike, bearing number KL 51 E 5880, ridden by the first accused and others were riding as pillion riders, with third accused keeping it in the shoulder bag slung on his back and caught red handed near to Kallekkad AR Camp on the evening of 8.3.2018 at 6.00 PM, as alleged?

2. Sentence and Order?

13. **Point No.1:-** It is the case of the prosecution that third accused, who is arrayed as the third accused, along with the first and second accused possessed 4.100 kilograms of ganja, by carrying in a motor bike, bearing number KL 51 E 5880, ridden by the first accused and others were riding as pillion riders, with third accused keeping it in the shoulder bag slung on his back and caught red handed near to Kallekkad AR Camp on the evening of 8.3.2018 at 6.00 PM. In proof, thereof, it relied on the evidence of 7 witnesses examined, all of who supported it by deposing in tune with their respective points.

14. Among the supporting witnesses, PW4 is the detecting officer. According to him, on 8.03.2018, he was working as Town North Police Station Sub Inspector. On that day he was doing petrol duty along with his team. While so at 6.00 PM he found three persons riding in a motorbike at Kallekkad, bearing number KL 51 E 5880 and he stopped it and asked the whereabouts of the riders. The person who was riding it was Rafeeq and one in the middle was Abdul Ansar Ali and the third one in the back was Mohammed Shafi, who is the accused facing trial. (here in after referred to as the accused). He found the accused slinging a shoulder bag, having red colour, in his back and he enquired about the contents of it and he and said that it contains his apparels. But he noticed him to be getting perplexed. So he took possession of the bag and inspected the same and found inside two packets wrapped with brown cellotape. He took out it and inspected in the presence of the witnesses present over there and found both of it containing the mixture of ganja.

15. It is seen, PW5 officer who accompanied PW4 deposed in tune with the above narrative of PW4, that on evening of 8.3.2018 at 6.00 PM, he was in the petrol team of PW4, along with the other police officials and when they were at Kallekkad in Palakkad – Kuvapally Highway, he found 3 persons riding in a motorcycle proceeding towards Ottapalam. PW4, stopped them and enquired their whereabouts and understood it to be accused persons 1 to 3, in which first accused Rafeeq was riding the vehicle, the person in the middle was the second accused Mohammed Ansar Ali and the last one was a third accused, Muhammad Shafi. He was hanging a bag in his shoulder, having red colour. PW4, enquired him about the contents of it and he told him that it as his dirty

clothes. PW4 took possession of the bag from him and inspected the same and found inside two packets wrapped with the cello tape. The trio gave contradictory answers about the contents of that packets. So PW4 opened up the packets and found inside dried leaves, flowers and seeds of ganja plant. He convinced the members of the team as well as the witnesses present over there, the same.

16. PW1 deposed further that, he then he arrested the three accused at 6:30 PM, intimating them of the offence they have done. He has prepared arrest memo for the same, which he proved as Ext. P2. It contains the signatures of himself, the witnesses and the three accused persons. He prepared separate instruction memos, which he provided as Ext. P3 to 5 respectively, of which, Ext. P5 pertains to accused.

17. PW4 deposed that then he sent one of the civil police officer in his team to fetch a weighing machine and he brought one from the nearby shop conducted by one Ravi. Then he mixed the ganja in both the package and put it in a plastic cover taken from the investigation kit and weighed it and found it to have 4.1 kilograms. Then he placed a slip inside that cover, that contains the signatures of himself, accused and also the witnesses and tied its opening and covered it in white cloth and wrapped in brown paper and affixed label of similar kind in it and tied it with twine and affixed seal in it and took into custody, giving it the marking S1.

18. PW4 further that he packed the packing materials of the ganja, namely the packets wrapped with cello tape, in the same way by putting label in it and wrapped it in brown paper and affixed label on top of it and tying with the twine and fixing seal in it. He gave that packet the marking S2. He also took into custody the bag in which the ganja

was carried by the accused along with others by wrapping it in brown paper. It was having four chambers. He took in to custody the bike in which the trio was riding. He prepared seizure mahazer, which is Ext. P1. It is affixed with SHO seal.

19. PW4 has identified the label affixed in the packet in which the packing materials of the ganja was packed as Ext. P6(a). He also has identified the two brown papers pasted with brown sellotape as MO1 series. It contains two papers. He also has identified the other slip in it as Ext. P7. In the same way, he identified the shoulder bag as MO2 and the brown packing of it. He knew the motorbike that was taken into custody from the accused persons.

20. PW4 deposed that, he took the person along with the contraband and their records prepared to the police station, where he prepared first information statement. He has proved it as Ext. P8. Based on that he registered Ext. P8(a) First Information Report. He prepared Ext. P9 property list. Then he prepared Report under section 57 NDPS act and sent to his immediate superior officer. Then he had handover the accused along with contraband and the records prepared to the circle, inspector for the purpose of investigation.

21. Thereafter, as per direction of the investigating officer, he appeared before the court on 12.3.2018 and it took two samples of 25 grams each in two plastic covers and rapid brown papers and affix labels in it I took into custody. He prepared sample list for the same, which is Ext. P10. It contains the specimen impression of the steel fixed in the samples. Photographs of the immediate proceedings were taken, which he proved as Ext. P11 series. He identified the packet of the ganja from one of the photographs, which

is Ext. P11(b). He identified the vehicle used for transporting the ganja from one of the photographs., which is Ext. P11(b). The Magistrate has issued separate certification of the inventory proceedings, which he proved as Ext. P12.

22. Then he prepared forwarding note for sending the first sample for chemical analysis. He has proved the forwarding note as Ext. P13. The second sample was kept in the court as reserve sample. He identified that sample packet and the label affixed in it as Ext. P14. He also has identified the label put inside the cover of the sample as Ext. P15. Then he sent the residue of the contraband after taking samples to AR camp, Kozhikode as per the proceedings of the District Court. He proved it as Ext. P19. He also has proved the receipt under which that sample was received at the godown as Ext. P20.

23. It is seen, PW5, the officer who accommodated PW4 would depose in tune with the narrative of PW4 with respect to the dictation of the contraband and the procedural aspects taken place in the place of detection.

24. However, on a close reading these evidence, I feel there are a number of vital flaws that is to create doubt on the prosecution case, especially with respect to the chain of custody of the contraband allegedly seized from the accused. As far as the chain of custody of the contraband is concerned, it is a matter to be proved by the prosecution that the contraband was taken custody of under proper packing and sealing and it was produced before the Magistrate in an untampered condition and the samples were taken there from and send the samples to the chemical lab without any manipulation in it and that it was the result of that sample that is produced and put against the accused. It

constitute “link evidence”. Honourable High Court in *Firdoskhan khurshidkhan V. state of Gujarat (2024 KHC 8197)* ruled on the importance of the link evidence .

25. But such an evidence is lacking in this case, for the following reasons, firstly that there is no evidence to show the identity of the contraband seized from the accused because Ext. P1 seizure mahazer does not contain the specimen seal impression allegedly affected in the contraband in the spot while packing it. Honourable High Court in *Aneesh V. state of Kerala (2025 10C 2899)* has ruled the importance of affixing the specimen impression of the seal affixed in the seizure mahazer and suspicion that it would impose upon the prosecution case in case of the absence of it. Here in this case PW4 did not explain why he did not affix the specimen seal impression in Ext. P1 seizure mahazer. So also the prosecution could not explain it, which I feel is passed out on the identity of the contraband allegedly seized from the accused and packed in the place of detection.

26. Such a doubt gets aggravated when considering the fact that the specimen seal impression he is not affixed in Ext. P9 property list, the first record under which the seized contraband was produced before the court. Needless to say, the identity of the contraband that is produced before the court is a matter of utmost importance so as to prove its identity that it is the very same contraband that is seized and taken into custody from the accused that is produced before the court. For the proof of such identity, the specimen seal affixed in contraband is the best piece of evidence, as being a unique identification mark, which should have been there in the record under which the contraband is produced before the court. But that best piece of evidence is conspicuously absent in Ext. P9 property list under which the contraband was produced before the court

first. It is totally a specious circumstances and PW1 did not give any explanation for it. So also the prosecution failed to state the reason why PW1 did not affix that explain.

27. In this regard, it is to be noted that the contraband is seen produced before the court on 9.3.2018, the next day of the date of detection of the contraband. Significantly, the Magistrate has not noted the state and condition of the packet of the contraband, but simply received it and returned back to the police official, with the direction to produce it on the next working day. But there is no proof that PW4 had complied with that direction by producing the contraband before the court on the next working day. On the other hand, Ext. P18 application for inventory is produced before the court on 12.3.2018, in which the Magistrate is seen to have recorded that the contraband was produced before him on that day. It can be taken to find that the contraband was produced back to the court on 12.3.2018, which is on the 4th day on which the Magistrate has ordered PW4 to return back the contraband on the next working day. There is absolutely no evidence to show it otherwise that he had produced the contraband before the Magistrate on the next working day of 9.3.2018 itself, as against the endorsement of the Magistrate in Ext. P18 inventory application. So it can be confirmed that he produced the contraband before the Magistrate on the 4th day of the direction given to him to produce it before the court, which directly put in question the identity and untampered state of the contraband that was produced before the Magistrate at the instance on 9.3.2018 and subsequently on 12.3.2018, the date on which it was produced for inventory proceedings.

28. These aspects the credibility of the contraband produced before the court, making the prosecution to drastically suffer from it. So also, it requires consideration with respect to the samples taken from the contraband. It is the category evidence of PW4 that the samples were taken in the inventory proceedings taken place on 12.3.2018 before the Magistrate. The records of the inventory application Ext. P12 inventory certification of the Magistrate support it. The sample listed prepared in connection with that sampling proceedings, Ext. P10, is dated 12.3.2018. However, the evidence of PW4 brought out in cross examination brings out a disturbing facts that he had prepared Ext. P9 property as well as Ext. P13 forwarding note when he appeared before the Magistrate for inventory proceedings. It means, both of those were prepared in anticipation, before the actual taking of samples inventory proceedings. Needless to say, it is an unacceptable procedure, as it was possible to PW4 to prepare sample list fully after the actual taking of samples by the Magistrate on 12.3.2018. It was not at all possible for him to prepare the sample list before that time, anticipating the manner in which the sampling proceedings was made before the Magistrate. It is quite an illegality also, as it brings out a sense that he himself has decided on the samples and the way in which it was taken and packed, label and sealed. It necessarily has to casts doubts on the samples and the proceedings of the collecting of it before the Magistrate.

29. It is true that the Magistrate has certified Ext. P10 sample list prepared by PW4 in his Ext. P12 inventory certification. But it remains to be an unexplained fact that how PW4 understood the manner in which samples are taken, packed and sealed in accordance with which sample list was prepared before the actual taking place of the

procedure. It can only be found that he on its own understanding decided on the quantity of the samples, manner of packing and sealing of it and prepared the sample list accordingly, completely shadowing proceedings of sampling made before the Magistrate. PW4 and prosecution has no explanation for the same. It I feel makes shabby the sampling proceedings, which to considerably affect the prosecution case.

30. Added to these fatal flaws, there is no evidence of the compliance of the provisions of Section 57 of NDPS Act. PW4, though who state about its compliance, no record is produced and proved by the prosecution in support of it. PW4 did not give any explanation to it, nor does the prosecution. True that procedure under Section 57 of the NDPS Act is not mandatory, but only directory. But the fact that there is total non-compliance of such a procedure has to cast doubt on the prosecution case, especially when it stands otherwise affected by the above stated flaws. The decision of the Honourable High Court in *2020 (2) KLT online 1082* support this finding. This also has to tell upon the prosecution case, affecting its very credibility.

31. Cumulative effect of all this discussion makes me to find that the prosecution case for the accused suffers from the above said vital factors, which I feel, cast doubts on it. The accused, is perfectly entitled to get its benefit, making no chance other than to find against his guilt in this case. It makes him to get an acquittal. Point is answered against the prosecution.

32. **Point No. 2:-** In the result accused is acquitted under Section 258 (1) of BNSS for the offence under Section 20(b) (ii) B & 29 of NDPS Act. He is set at liberty for that offence. His bail bonds stands cancelled.

MOs are preserved for the trial of the second accused.

Prepared in Google docs voice typing app and corrected by me and pronounced in the open court on 31st day of March 2026.

Sd/-
Additional Sessions Judge-II

APPENDIX

List of Prosecution/Defence/Court Witness

A. Prosecution Witness :-

Rank	Name	Date	Whether Eye witness, Police Witness, Excise Witness, Expert Witness, Medical Witness, Other Witness
PW1	Rajesh	23.01.2024	Other Witness
PW2	Raveendran	24.01.2024	Other Witness
PW3	Saseendran	24.01.2024	Other witness
PW4	Ranjith.R., Sub Inspector of Police, Town North Police Station, Palakkad.	09.09.2025	Police Witness
PW5	Kishore.R., CPO 5595, Town North Police Station, Palakkad.	07.10.2025	Police Witness
PW6	Sreedharan.M., Village Office, Pirayiri Village Office,	10.10.2025	Expert Witness,
PW7	Vijayakumar.G.D., DYSP, Palakkad (Retd)	03.12.2025	Police Witness

B. Defence Witnesses :- Nil

C. Court Witness:- Nil

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl No.	Exhibit Number	Date	Description
1	P1	08.03.2018	Seizure Mahazar

2	P2	08.03.2018	Arrest Memo of A1 to A3
3	P3	08.03.2018	Inspection Memo of A1
4	P4	08.03.2018	Inspection Memo of A2
5	P5	08.03.2018	Inspection Memo of A3
6	P6	--	Label in S2
7.	P7	--	Slip (Kept in bundle)
8.	P8	08.03.2018	FIS
9.	P8(a)	08.03.2018	FIR
10.	P9	09.03.2018	Property List
11.	P10	12.03.2018	Sample List
12.	P11 Series	--	Photographs (Nos.6)
13.	P12	12.03.2018	Inventory Proceedings
14.	P13	11.04.2018	Forwarding Note
15.	P14	--	Label in MO2
16.	P15	02.03.2018	Label in MO3 (Kept in bundle)
17.	P16	23.04.2018	Scene Plan
18.	P17	09.03.2018	Remand Report
19.	P18	09.03.2018	Sample Request
20.	P19	17.03.2018	Proceedings of the Sessions Judge, Palakkad
21.	P20	19.03.2018	Godown Receipt
22.	P21	15.09.2020	Chemical Examination Report

B. Defence Exhibits :-Nil

C. Court Exhibits :- Nil

D. Material Objects :-

Sl No.	Material Objects	Description
1	MO1 Series	Brown Papers

15

2 MO2

Bag (Red with Yellow colour & Brown paper)

3 MO3

Sample Ganja

Sd/-
Additional Sessions Judge- II

Typed by :Jiji.C.
Compared by :Jayasudha.A.
Copy ready on :10.04.2026

**Fair/Copy of Judgment in
S.C.No.223/2018
Dated: 31.03.2026**