



IN THE COURT OF JMFC-III, SHIVAMOGGA

:: PRESENT ::

SMT. SHRUTHI V.
B.A., LL.B., LL.M.,
JMFC-III, SHIVAMOGGA.

CRIMINAL CASE No.165/2024

DATED THIS THE 9TH DAY OF JULY, 2026

COMPLAINANT :

State by Rural Police Station,
Shivamogga.

(By learned APP)

-: Versus :-

ACCUSED:

1. Koushik B.R. S/o. Roopla Naika,
Aged about 21 years, Farmer,
R/o. Beeranakere Tanda,
Near Bus Stand, Shivamogga.
2. Yuvaraj B.U. S/o. Umla Naika,
Aged about 23 years, Farmer,
R/o. Beeranakere Tanda,
1st Street, Shivamogga.
3. Vinod B.N. S/o. Nooryanaika,
Aged about 24 years, Labourer,
R/o. Beeranakere Tanda,
Near Sevalal Temple, Shivamogga.

(By Sri S.H.P., Adv.)

1	Date of commission of offence	16-12-2021
2	Date of report of offence	16-12-2021
3	Date of arrest of accused	A-1 to A-3 on 16-12-2021
4	Date of release of accused	A-1 to A-3 on 01-01-2022
5	Name of informant	Sanjeev Kumar Tirluk (P.I.)
6	Date of recording evidence	25-03-2025
7	Date of closing evidence	16-03-2026
8	Offences complained of	Sections 8(c) and 20(b) of NDPS Act, 1985
9	Opinion of the Judge	Accused persons found not guilty

:: J U D G M E N T ::

The P.I. of Rural Police Station, Shivamogga, has filed the charge sheet against the accused No.1 to 3 alleging the commission of offences punishable under Sections 8(c) and 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act'), in station crime No.473/2021.

2. The brief facts of the prosecution case are as follows:

That on 16-12-2021 in between 9.30 a.m. to 11.00 a.m., in a public place situated at DVS Badavane, Kuvempu Nagara Double Road, within the limits of Shivamogga Rural Police

Station, the accused No.1 to 3, despite knowing that ganja is a narcotic substance, are alleged to have illegally stored it without any license and intended to sell it for unlawful gain, were found an illegal possession of ganja in two splendor bikes bearing registration No.KA-14-ES-9085 and KA-14-EP-4700 with an intention to sell the ganja. CW-1 along with CW-2 to CW-8 were conducted raid, arrested the accused No.1 to 3 and seized 410 grams of ganja worth Rs.8,000/-, cash of Rs.200/- and above said two splendor bikes from them, by drawing mahazar. Thereby, the accused No.1 to 3 have committed the offences punishable under Sections 8(c) and 20(b) of NDPS Act, 1985.

3. Based upon the information received, the S.H.O. of Shivamogga Rural police has registered a case in Crime No.473/2021. On 01-01-2022, the accused No.1 to 3 got enlarged on regular bail. After completion of investigation, the present charge sheet came to be filed against the accused No.1 to 3 for the aforesaid offences. Upon the receipt of charge sheet, cognizance was taken under Section 190 of Cr.P.C. for the offences punishable under Sections 8(c) and 20(b) of NDPS Act, 1985 and summons was issued to accused No.1 to 3. The copy

of charge sheet was supplied to accused No.1 to 3 as per Section 207 of Cr.P.C. Substance of accusation was read over to the accused No.1 to 3, they pleaded not guilty and claimed to be tried. Hence, the case was posted for prosecution evidence.

4. In order to bring home the guilt of the accused No.1 to 3, the prosecution has examined 03 witnesses as PW-1 to PW-3. In support of the oral evidence, the prosecution has got marked 13 documents at Ex.P.1 to Ex.P.13.

5. Thereafter, accused No.1 to 3 were examined under Section 313 of Cr.P.C., the incriminating circumstances which are appeared against them in the case of prosecution is read over and explained in the language known to them, they have denied the same and did not choose to lead defence evidence from their side.

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

7. The points which arise for the consideration of this Court are as under :

1. **Whether the prosecution proves beyond all reasonable doubts that, on 16-12-2021 in between 9.30 a.m. to 11.00 a.m., in a public place situated at DVS Badavane, Kuvempu Nagara Double Road, within the limits of Shivamogga Rural Police Station, the accused No.1 to 3 have illegally stored the ganja and intended to sell it for unlawful gain, were found in illegal possession of 410 grams of ganja in two splendor bikes bearing registration No.KA-14-ES-9085 and KA-14-EP-4700, thereby, accused No.1 to 3 have committed the offences punishable under Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 ?**
2. **Whether the prosecution further proves beyond all reasonable doubt that, on the aforesaid date, time and place, the accused No.1 to 3 have illegally stored the ganja without any license with an intention to sell for unlawful gain, thereby, accused No.1 to 3 have committed the offences punishable under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 ?**
3. **What order?**

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

Point No.1 & 2 : In the negative.

Point No.3 : As per the final order for the following;

:: R E A S O N S ::

9. **POINT No.1 AND 2 :-** These points arisen out of incident and these points are taken up together for discussion in order to avoid the repetition of facts and evidence.

10. Now let me appreciate the oral and documentary evidences adduced by the prosecution. In order to bring home the guilt of the accused No.1 to 3, the prosecution has examined 03 witnesses as PW-1 to PW-3 and got marked 13 documents as Ex.P.1 to Ex.P.13. The learned counsel for accused No.1 to 3 has cross examined PW-1 to PW-3 at length.

11. PW-1 is the complainant who deposed that, on 16.11.2021, at about 09.30 a.m., credible information was received that illegal sale of ganja was being carried on at DVS Layout, Kuvempu Nagar and the said information was immediately brought to the notice of his superior officers and he

went to the spot along with two panchas and his staff in departmental jeep, it was observed that three persons had parked their motorcycles at the spot, around which several members of the public had gathered, a black plastic cover was kept on the seat of one of the motorcycles and the said persons were giving articles from the cover to public, they conducted raid on them and upon enquiry, they identified themselves as Kaushik, Yuvaraj and Vinod. On conducting the search of accused persons, a white plastic cover was recovered from the possession of Kaushik and found dry ganja which was weighed about 110 grams, a black plastic bag containing ganja was recovered from the possession of Yuvraj which was weighed about 310 grams and four small plastic ganja sachets were recovered from the possession of Vinod which was weighed about 35 grams and also recovered cash of Rs.200/- from his pocket and two Splendor motorcycles were seized from them and conducted seizure mahazar, taken photographs and returned to police station and lodged complaint against accused No.1 to 3.

12. When such being the case, PW-1 could have inform to the S.H.O. of the police station to register the FIR before rushing to the spot which is mandatory under law. As per the records, the PW-1 has prepared self-complaint after conducting search and seizure of the accused persons which is against Section 154 of Cr.P.C. The decision of Hon'ble Apex Court also made it clear in the case of ***Lalita Kumari vs. Government of Uttar Pradesh and others, (2013) 4 SCR 713*** that in case of receipt of information regarding cognizable offence and as per Section 154(1) of Cr.P.C., registration of the FIR at the earliest point of time i.e., immediately after receipt of such information, is general rule. But in this case, though such information regarding commission of cognizable offence is said to have been received by the police, even then, there is no registration of the FIR immediately after the receipt of such information and even there is no material produced by the prosecution in this case that they have entered at least the information received, in the diaries kept in the said Police Station and what is the said information, no documents are produced before the Court. Therefore, the mandatory requirement of Section 154(1) of

Cr.P.C. is not followed by the Police before proceeding to the spot on the basis of the said information.

13. The next aspect is, the police have to comply the Section 50 of NDPS Act which is mandatory provision. The Section 50 of NDPS Act is reproduced as under:-

“Section 50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith

discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

14. On analysis of the existing precedent and statutory position, the Hon’ble Supreme Court summarized the

requirements envisaged by Section 50 of the Act in **Ranjan Kumar Chadha V/s. State of Himachal Pradesh reported in 2023 SCC OnLine SC 1262** are as follows:

(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the

same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.

(vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.

15. Obviously, Section 50 of the NDPS Act is clearly applicable to the present case on hand. In the present case, on 16-12-2021 in between 9.30 a.m. to 11.00 a.m., in a public place situated at DVS Badavane, Kuvempu Nagara Double Road, within the limits of Shivamogga Rural Police Station, the accused No.1 to 3, despite knowing that ganja is a narcotic substance, are alleged to have illegally stored it without any license and intended to sell it for unlawful gain, were found in illegal possession of ganja in two splendor bikes bearing registration No.KA-14-ES-9085 and KA-14-EP-4700 and sale of ganja without permit from the concerned authority and CW-1 along with CW-2 to CW-8 were conducted raid, arrested the accused No.1 to 3 and seized 410 grams of ganja worth Rs.8,000/-, cash of Rs.200/- and above said two splendor bikes from them, by drawing mahazar in presence of panchas. Further, they brought accused persons, seized ganja and bikes to the police station and prepared self-complaint and produced them before CW-16 for further investigation.

16. The CW-2 to CW-7 are the pancha witnesses. In spite of issuance of summons, warrant and proclamation, they have

not appeared before the Court to depose about the seizure mahazar. The vital evidences of CW-2 to CW-7 are not record. When such being the case, only based on the official witnesses, the due weightage cannot be given to the seizure mahazar.

17. Even PW.1 does not spell about compliance of Section 50 they gave an option for search before gazetted officer or Magistrate. The 3 options available under Section 50 were not given to the accused persons. The main purpose of Section 50 is to avoid innocent persons implicated in unnecessary criminal cases. Non-compliance of Section 50 of NDPS Act, the presumption available in favour of prosecution is stood rebutted.

18. PW-2 and PW-3 are the Investigation officers. They deposed about receival of complaint, preparation of FIR, conduct of arrest procedure of accused persons, receival of FSL report, recording of statement of witnesses and filed the charge sheet against accused persons. The evidence of I.O. would not help the prosecution case to prove the commission of alleged offence by the accused persons. The police officials have not complied

the Section 50 of NDPS Act which would raises a doubt in respect of commission of offence by the accused persons. Non-compliance of the same would render the search illegally and result in acquittal of the accused persons.

19. In this case, the prosecution has failed to examine independent mahazar witnesses. Even has issuance of summons and warrant against them, their presence could not be secured. Prosecution has failed to secure their presence. Hence, prosecution was not able to prove contents of mahazar i.e., Ex.P.4. On appreciation of the evidence, it reveals that, the examined witnesses are departmental witnesses. No independent witnesses are examined in this case.

20. On assessing the entire oral and documentary evidences available on record, it is to hold that, the prosecution has utterly failed to prove its case against the accused persons for the offences punishable under Section 8(c) and 20(b) of NDPS Act. The benefit of doubt shall be extended in favour of accused persons. Hence, in the touchstone of reasons assigned

above, this Court answer the **point No.1 and 2 in the Negative.**

21. **Point No.3 :-** On the basis of findings and reasons, proceed to pass the following:-

:: O R D E R ::

Exercising the power under Section 248(1) of Cr.P.C., the accused No.1 to 3 are hereby acquitted of the offences punishable under Sections 8(c) and 20(b) of Narcotic Drugs and Psychotropic Substances Act.

Acting under section 437(A) of Cr.P.C., it is order that the bail bond and surety bonds executed by the accused No.1 to 3 and surety shall be in force for six months.

The accused No.1 to 3 are set at liberty forthwith.

The item No.1 – 25 grams ganja and item No.2 – 410 grams ganja seized under P.F.No.303A/2021 dated 16-12-2021 is ordered to be destroyed

after the appeal period is over as per rule.

The item No.3 i.e., Rs.200/- seized under P.F.No.303A/2021 dated 16-12-2021 shall be confiscated to the State after the appeal period is over.

The item No.4 and 5 i.e., two splendor bikes seized under P.F.No.303A/2021 dated 16-12-2021 released in favour of the claim petitioners are made as absolute.

(Dictated to the Stenographer Grade-III, computerized by him, corrected and then pronounced by me in the open court on this 09th day of July, 2026)

**(SMT. SHRUTHI V.)
J.M.F.C.-III, SHIVAMOGGA.**

:: A N N E X U R E ::

List of witnesses examined on behalf of Prosecution :-

PW-1	:	Sanjeev Kumar T.
PW-2	:	J.R.F. Miranda
PW-3	:	Murali S.

List of exhibits marked on behalf of Prosecution :-

Ex.P.1	:	Complaint
Ex.P.1(a) and (b)	:	Signatures
Ex.P.2	:	Requisition
Ex.P.2(a)	:	Signature
Ex.P.3	:	Credible information received from an informant
Ex.P.3(a)	:	Signature
Ex.P.4	:	Seizure mahazar
Ex.P.4(a)	:	Signature
Ex.P.5	:	Photograph
Ex.P.6 to 8	:	Notice
Ex.P.6(a) to 8(a)	:	Signatures
Ex.P.9 to 11	:	Statement of consent of the accused persons
Ex.P.9(a) to 11(a)	:	Signatures
Ex.P.12	:	FSL Report
Ex.P.12(a)	:	Signature
Ex.P.13	:	FIR
Ex.P.13(a)	:	Signature

List of witnesses examined on behalf of Defence :-

-: NIL :-

List of exhibits marked on behalf of Defence :-

-: NIL :-

List of material objects marked on behalf of Prosecution :-

-: NIL :-

(SMT. SHRUTHI V.)
J.M.F.C.-III, SHIVAMOGGA.