



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200288 OF 2024

(374(Cr.PC)/415(BNSS))

BETWEEN:

SRI. ADAPPA S/O AMARAPPA
AGED ABOUT 40 YEARS
OCC: AGRICULTURE
R/O: ELEKUDLIGI VILLAGE
SINDHANUR, TQ: SINDHANUR
DIST: RAICHUR-584128

...APPELLANT

(BY SRI. ARUNKUMAR AMARGUNDAPPA, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH SHO, TURVIHAL POLICE STATION
SINDHANUR CIRCLE
SINDHANUR, DIST: RAICHUR
NOW REPRESENTED BY
ADDL. SPP HIGH COURT OF KARNATAKA
AT KALABURAGI BENCH-585102

...RESPONDENT

(BY SRI.JAMADAR SHAHABUDDIN, HCGP)

THIS CRL.A IS FILED U/S.374 (2) OF CR.P.C (OLD)
U/SEC. 415 (2) OF BNSS ACT (NEW) PRAYING TO SET ASIDE
THE JUDGMENT AND ORDER OF SENTENCE DATED 04.11.2024
PASSED IN SPL.C.NO.5230/2024 BY THE III ADDL. DIST. AND
SESSIONS JUDGE, RAICHUR (SITTING AT SINDHANUR) AND
SPECIAL JUDGE FOR TRIAL COURT CASES UNDER NDPS ACT.,





IN CONVICTING THE APPELLANT-SOLE ACCUSED FOR THE OFFENCE U/SEC.20(a) OF NDPS ACT., 1985.

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 passed by the III Addl. District and Sessions Judge, Raichur sitting at Sindhanur and Special Judge for Trial of Cases under NDPS Act.

2. The parties are referred to same rank what they had before the trial Court.

3. The brief facts leading to this appeal is that:

On 06.11.2020 at 01.30 p.m., when CW.1 and his staff raided the courtyard of the accused house, they have noticed that accused has grown two ganja plants weighing about 6 kgs, 130 grams worth of Rs.6,900/- without any



valid license. Thus the accused has committed the offence punishable under Section 20(a) of NDPS, Act.

4. After filing the charge sheet, the accused was released on bail during the crime stage and appeared before the Court. On hearing, the trial Court framed charges for the alleged commission of offence, the same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claim to be tried.

5. To prove the guilt of the accused, the prosecution examined 17 witnesses as PWs.1 to 17 and 32 documents were marked as Exs.P.1 to 32. On closure of prosecution evidence, statement under Section 313 of Cr.P.C, was recorded. The accused has totally denied the evidence of prosecution witnesses. However, 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 commission of offence under Section 20(a) of NDPS Act and sentence



to undergo rigorous imprisonment for two years and to pay fine of Rs.25,000/- with default sentence.

7. Being aggrieved by this judgment of conviction and order on sentence, the appellant has preferred this appeal. The learned counsel for the appellant has urged the following grounds:

i. That the impugned judgment and order of conviction and sentence recorded by the learned Special Judge is manifestly illegal, arbitrary and against the facts and evidence on record. Hence the same is liable to be set aside.

ii. The reasons assigned by the learned Trial Judge while passing the impugned judgment and order of conviction and sentence are erroneous and as such he has slipped into an error and passed the impugned judgment and order of conviction and sentence, resulting in substantial miscarriage of justice to the case of appellant.

iii. The impugned Judgment and Order of conviction passed by the learned Sessions is unsustainable



on the sole ground that, PW-4 to 6 & 13 who cited as witness while conducting raid and also search and seizure, have categorically deposed that, no such raid, search and seizer took place in their presence and further denied giving statement before the police to that effect. Though all these witnesses were treated as hostile witnesses as such learned public prosecutor cross examined them even in the said cross nothing is elucidated from their mouth. Under such circumstances, the evidence of official witnesses requires corroboration of independent witnesses and based on the oral testimonies of official witnesses, conviction cannot be imposed. Looking into any angle, the prosecution has failed to prove its case beyond reasonable doubt against accused, but the trial Court based on uncorroborated testimonies has wrongly convicted the accused.

iv. That, in the absence of corroboration from any of the independent witnesses the judgment and order of



conviction is bad in law as the accused seriously disputed raid, search & seizer.

v. The place from where the alleged contraband articles are seized is public place and road and such cultivation of contraband articles are visible to general public, thus accused cannot be said either cultivated not possessed said contraband articles, in the absence of the same the accused cannot be said to have committed the offence U/Sec.20(a) of NDPS Act.

vi. Since prosecution failed to establish possession and ownership of the accused over said place by producing cogent documentary evidence, the conviction recorded is unsustainable.

vii. Learned Special judge is not justified in passing the impugned Judgment & Order of conviction solely based on the testimony of PW-1 (Regular/Police Pancha) PW-2 (Police Constable) PW-12 (Gazetted Officer) & PW-16



(PSI-Complainant) who are all interested witnesses in seeing conviction of accused.

viii. Learned Special judge has committed serious error of law in convicting the accused on the premise that, accused has not taken any defense that he was not in occupation of the place where two Ganja trees were planted or cultivated. However a perusal of cross examination of PW-16 clearly discloses the fact that accused has disputed possession of the place where alleged Ganja Plants seized and ownership of the same. Such being the factual aspect of the matter special judge by recording incorrect finding passed the impugned Judgment & Order of conviction, therefore the same is unsustainable.

xi. The respondent-Police have not complied with the mandatory provisions of Sections 42, 50, 52 and 54 of the NDPS Act. That the alleged raid was conducted on the land belonging to Govt. and this accused is not the owner



of the said land. Therefore Spl. Judge is not justified in convicting the accused.

x. A perusal of evidence of PW14- Scientific Office, it seems that the report of chemical analysis is incomplete as the Scientific Officer has not categorised the cannabis plants, whether it includes stem, leaves, branches, fruiting tops, etc., PW14-Scientific Officer has not described the Ganja as defined under Section 2(iii)(b) of the NDPS Act. Therefore, Ex.P16-Chemical Examiner's Report is inconclusive. In this regard it is helpful to refer the decision of a Co-ordinate Bench of this Hon'ble Court, in the case of **K.K. REJJI AND OTHERS v. STATE BY MURDESHWAR POLICE STATION, KARWAR**, reported in **2010 (5) KANT.L.J 279**, has held as under:-

"Ganja is defined under the provision of NDPS Act as follows:

"2(iii)(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated."



xi. On perusal of the evidence of PWs.4 to 6 and 13, there is contrary to the evidence as to seizure of ganja, its measurement, weight and the manner of seizure conducted by them. Admittedly, the Investigating Officer has not examined any cannabis plants and sample plants. Therefore the conviction is not sustainable.

xii. The trial court has totally ignored the bristling inconsistencies and the contradiction in the evidence of the prosecution witnesses and has given undue weight to the insufficient.

8. On all these grounds sought for allowing of this appeal.

9. As against this the learned HCGP Sri.Jamadar Shahbuddin, submits that absolutely there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court and sought for dismissal of the appeal.



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

- i. Whether the trial Court is justified in convicting the accused for the offence under section 20(a) of NDPS Act, 1985?
- ii. What order?

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

Point No.1: In the Negative.

Point No.2: As per final order.

Regarding point No.1:

12. I have examined the materials placed before this Court. It is the specific case of the prosecution that accused has grown two ganja plants in front of the house/shed. To substantiate the same, the prosecution has produced the RTC extract at Ex.P6 and adduced oral evidence.



13. PW.8-Mohammed Aneef, PDO of Ele kudligi village has deposed that on 19.11.2020, the Sindhanur Police requested him to furnish the property extract of Adappa of Ele kudligi Village. After verifying the panchayat records, he found no documents pertaining to the property of Adappa, and he came to know that his property is situated on land bearing Survey No.1 of Ele kudligi Village. In that regard, he issued a letter to the Investigating Officer as per Ex.P.5.

14. PW.11-Moinuddin has deposed that on 07.12.2020, the Sindhanur Rural Police requested him to issue an RTC pertaining to land bearing Sy.No.1 of Ele kudligi Village. Upon their request, he issued a certified copy of the RTC along with his letter as per Exhibit P7.

15. In the complaint, panchanama and the charge sheet, the Investigating Officer has not shown that the shed is situated in Sy.No.1 of Ele kudligi Village. PW.8-PDO of Ele kudligi Village has clearly deposed that no documents are standing in the name of the accused in



Elekudligi Panchayath. PW.11-Deputy Tahsildar has also not deposed anything against the accused. Only at the request of the Investigating Officer, has issued Ex.P6-RTC extract. Ex.P6-RTC extract does not reveal the name of accused. Charge is also not framed against the accused that he has grown two ganja plants in Sy.No.1 of Elekudligi Village.

16. On careful examination of the entire evidence on record, I do not find any materials to show that accused has constructed the house in Sy.No.1 of Elekudligi Village and grown two ganja plants as alleged by the prosecution. When the prosecution has failed to prove that the accused has constructed the house/shed in Sy.No.1 of Elekudligi Village, the question of growing two ganja plants as alleged by the prosecution does not arise. The prosecution has utterly failed to prove the guilt of the accused. However, the trial has convicted the accused, which is not sustainable under law. Hence, I answer point No.1 in the negative.



Regarding Point No.2:

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

ORDER

- i. The Criminal Appeal is ***allowed***.
- ii. The judgment of conviction and order on sentence dated 04.11.2024 passed in Spl.C.No.5230/2024 by the III Additional District and Sessions Judge, Raichur, sitting at Sindhanur and Special Judge for Trial of Cases under NDPS Act, is hereby set aside.
- iii. The accused is acquitted for the commission of offence punishable under Section 20(a) of NDPS Act, 1985.
- iv. The trial Court is directed to refund the fine amount, if any in deposit, to the appellant/accused;



**NC: 2026:KHC-K:3587
CRL.A No. 200288 of 2024**

Registry is directed to send the trial Court records along with the copy of this Judgment to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

TIN,MSR
List No.: 1 SI No.: 33
CT-BH