HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 03RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRIMINAL APPEAL NO. 100013 OF 2018 (C)

BETWEEN:

BABU @ PRAKASH S/O VISHWANATH BHANDAGE
AGE: 43 YEARS, OCC: SODA BOTTLE BUSINESS,
R/O: GUDDADAKERI ONI,
NEAR NAGALINGAJJANA MATH,
NAVALAGUND.

...APPELLANT

(BY SRI S.G. KADADAKATTI, ADVOCATE.)

AND:

THE STATE OF KARNATAKA
THORUGOH DY.SUPERINTENDENT OF EXCISE
POLICE STATION, DHARWAD,
THROUGH STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD.

...RESPONDENT

(BY SRI JAIRAM SIDDI, HCGP.)

Digitally signed by MALLIKARJUN RUDRAYYA KALMATH
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.07.04 12:50:11 +0530

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE, 1973, PRAYING TO CALL FOR RECORDS AND TO ALLOW THIS CRIMINAL APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 08.12.2017 AND ORDER OF SENTENCE DATED 08.12.2017 PASSED BY PRINCIPAL SESSIONS AND

SPECIAL JUDGE, DHARWAD, IN SPECIAL NDPS (CC) NO.3/2017 FOR THE OFFENCES PUNISHABLE UNDER SECTION 8(b) AND 8(c) READ WITH SECTION 20 AND 25 OF NDPS ACT, 1985, IN THE INTEREST OF JUSTICE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE RAJESHWARI N. HEGDE

CAV JUDGMENT

This appeal is preferred by the accused under Section 374(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), challenging the Judgment of Conviction and Order of Sentence dated 08.12.2017 passed by the Principal Sessions and Special Judge, Dharwad, in Spl. NDPS (CC) No.3/2017, whereby the accused was convicted for the offences punishable under Sections 8(b) and 8(c) read with Sections 20 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"), and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine

of Rs.25,000/-, in default of payment of fine, to undergo simple imprisonment for a period of six months.

2. For the sake of convenience and easy reference, the parties are referred to according to their rank before the Trial Court.

3. The case of the prosecution, in brief, is as under:

That the Excise Inspector, Navalgund Range, on 19.01.2017, received credible information regarding the transportation of ganja in a Tata Ace vehicle bearing Registration No. KA-25/D-4046 from Hubballi towards Navalgund. Immediately upon receipt of the information, she informed her superior officer, namely, the Deputy Superintendent of Excise, Dharwad Sub-Division. Thereafter, in compliance with the provisions of the NDPS Act, she submitted a requisition before the jurisdictional Magistrate, namely, the JMFC, Navalgund, seeking permission to search the said vehicle and also prayed for

issuance of a search warrant. The learned Magistrate, after considering the requisition, granted permission and issued the search warrant on the very same day. Thereafter, the Excise Inspector secured two pancha witnesses and reached the Excise Office at about 9.30 p.m., where the Deputy Superintendent of Excise was present. She requested the pancha witnesses to accompany the raiding party, and upon their consent, proceeded with the raid after obtaining the search warrant at about 9.45 p.m. Thereafter, at about 10.15 p.m., the raiding party proceeded towards the Hubballi side and kept surveillance on the road expecting the arrival of the Tata Ace vehicle alleged to be transporting ganja. However, they did not notice the said vehicle for some time and continued to keep a close watch on the road. They proceeded towards Yamanur Gram Panchayat Office and, when they were at a distance of about 100 feet from the Gram Panchayat Office, the said Tata Ace vehicle was noticed coming from Hubballi towards Yamanur. On seeing the said vehicle, the

Excise Inspector and her staff intercepted and stopped it. Immediately after stopping the vehicle, the driver alighted from it and fled from the spot. Though the Excise officials attempted to chase and apprehend him, they could not succeed, as he escaped under the cover of darkness. Thereafter, the Excise Inspector and her staff conducted a search of the vehicle. During the search, they found a bag bearing the brand name 'Fastrack', which had two compartments. On opening one compartment, they found two orange-coloured packets wrapped in Telugu newspapers and tied with plastic wire. On opening the other compartment, they found ganja stored therein. To ascertain the quantity of the contraband, the Excise Inspector produced a digital weighing machine and, in the presence of the pancha witnesses and other Excise officials, weighed the seized substance. Each of the two packets was found to contain 02 kilograms of ganja, totalling 04 kilograms. In addition, another white-coloured cover containing 02 kilograms of ganja and a separate

white-coloured cover containing 01 kilogram of ganja were also found. Thus, in all, 07 kilograms of ganja was recovered from the vehicle. The Excise Inspector drew 50 grams of ganja as a sample from each of the seized packets for the purpose of chemical examination. The sample packets, as well as the remaining contraband, were duly sealed and assigned identification numbers in the presence of the pancha witnesses.

4. It is the further case of the prosecution that, during the search of the vehicle, the Excise officials found the Registration Certificate (RC) Book, Election Identity Card, and Driving Licence, all bearing the photograph and particulars of the accused. On verification of these documents, they identified the driver who had fled from the spot as the accused. They also came to know that the accused had allegedly been involved in similar offences earlier. Thereafter, a seizure mahazar (panchanama) was drawn at the spot in the presence of the pancha witnesses. The vehicle, the contraband articles, and the relevant

documents were seized under the mahazar. Subsequently, the Excise Inspector registered the First Information Report (FIR), thereby setting the criminal law into motion. After completion of the investigation, the charge sheet was filed before the jurisdictional Magistrate.

5. Upon filing of the charge sheet, the learned Magistrate took cognizance of the offences alleged against the accused. The presence of the accused was secured, and compliance with Section 207 of the Code of Criminal Procedure, 1973, was made by furnishing copies of the charge sheet and all the relied-upon documents to the accused. Thereafter, the accused was enlarged on bail.

6. After hearing both sides, the Trial Court framed charges against the accused for contravention of Sections 8(b) and 8(c) of the NDPS Act, punishable under Sections 20 and 25 of the said Act. The charges were read over and explained to the accused in the language known to him. The accused pleaded not guilty and claimed to be tried.

7. In order to establish the guilt of the accused, the prosecution examined six witnesses as PW.1 to PW.6, marked forty-five documents as Exs.P.1 to P.45, and produced ten material objects as MOs.1 to 10. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein all the incriminating circumstances appearing in the evidence of the prosecution witnesses were put to him. The accused denied all such incriminating circumstances and also denied his involvement in the alleged offence. However, he did not choose to adduce any oral or documentary evidence in his defence.

8. Upon hearing the arguments advanced by the learned Public Prosecutor and the learned counsel for the accused, the Trial Court, by its Judgment dated 08.12.2017, found the accused guilty of the offences charged against him and convicted him. Consequently, the accused was sentenced to undergo rigorous imprisonment

for a period of four years and to pay a fine of ₹25,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for a period of six months.

9. Being aggrieved by the said Judgment of Conviction and Order of Sentence, the accused has preferred the present appeal, inter alia, on the following grounds:

a) The impugned Judgment of Conviction and Order of Sentence is contrary to law, facts, and the material available on record.

b) The Trial Court has failed to appreciate that the evidence of the complainant is fraught with material inconsistencies and contradictions with regard to the sequence of events narrated by her. Though such inconsistencies materially affect the credibility of the prosecution case, the Trial Court has overlooked the same and has relied upon only those portions of the evidence which support the prosecution, while ignoring the evidence

favourable to the defence. Consequently, the findings recorded by the Trial Court are unsustainable in law.

c) The Trial Court has erred in placing reliance on the evidence of PW.1 and PW.4, whose testimonies suffer from material contradictions and inconsistencies with regard to the alleged incident as well as the alleged involvement of the accused. Though PW.1 has supported the prosecution case, the mandatory provisions of Section 42 of the NDPS Act, relating to the power of entry, search, seizure, and arrest without warrant or authorisation, have not been complied with. The Trial Court failed to consider this mandatory requirement despite the same having been specifically brought to its notice by placing reliance on the decision reported in ***1998 Cri.L.J. 2694 (Pankaj Pradhan v. State)***.

d) The mandatory provisions of Section 50 of the NDPS Act have also not been complied with. It is contended that non-compliance with the statutory

safeguards governing search, recovery, and seizure vitiates the entire prosecution, as held by the Hon'ble Supreme Court in ***State of Punjab v. Balbir Singh****, reported in* ***1994 Cri.L.J. 3702***. The Trial Court has failed to consider this important legal aspect while recording the conviction.

e) Though the prosecution has examined PW.4 as a Gazetted Officer, he was also a member of the raiding party and had actively participated in the search and seizure proceedings. Therefore, PW.4 could not have acted in the dual capacity of a Gazetted Officer as well as a member of the raiding party. Such a procedure is illegal and has vitiated the entire search and seizure proceedings, rendering the prosecution case unsustainable.

f) The prosecution has failed to produce Form No.15, and the Investigating Officer has not complied with the mandatory provisions of Sections 50, 55, and 57 of the NDPS Act. The Trial Court has committed a serious error in

overlooking these material procedural lapses, which go to the root of the prosecution case.

g) The Investigating Officer has also failed to properly preserve the seized samples and to maintain the sanctity of the chain of custody before sending them for chemical examination. The evidence on record indicates that the samples were kept in an ordinary almirah along with other seized articles in the normal course, thereby creating a serious possibility of tampering. The Trial Court has failed to appreciate this material infirmity while recording the conviction.

h) The conviction recorded by the Trial Court is based solely on the testimony of interested official witnesses. No independent and reliable evidence has been adduced by the prosecution to establish the genesis of the alleged incident. Therefore, the finding of guilt recorded by the Trial Court is erroneous, contrary to the evidence on record, and liable to be set aside.

i) There is absolutely no cogent or connecting evidence to establish the involvement of the accused in the alleged offence. The prosecution has failed to prove the case beyond reasonable doubt. The explanation offered by the accused in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, has not been properly appreciated or considered by the Trial Court.

j) The evidence of PW.1 to PW.6 is replete with material contradictions and inconsistencies, particularly those elicited during their cross-examination. Despite such infirmities, the Trial Court has selectively relied upon those portions of the evidence favourable to the prosecution while conveniently ignoring the evidence beneficial to the accused. Consequently, the impugned Judgment of Conviction and Order of Sentence suffers from serious legal and factual infirmities, resulting in a substantial miscarriage of justice. On these grounds, the accused has prayed for allowing the appeal by setting aside the

impugned Judgment of Conviction and Order of Sentence and for acquitting him of the charges levelled against him.

10. Heard the arguments of the learned counsel, Sri S.G. Kadadakatti, appearing for the appellant/accused, and the learned High Court Government Pleader, Sri Jairam Siddi, appearing for the respondent-State. The records of the Trial Court and the appeal papers have been carefully perused.

11. In the light of the rival contentions urged by the parties, the following points arise for consideration in this appeal:

i) Whether the Trial Court has failed to properly appreciate the compliance of the mandatory provisions of Sections 42 and 50 of the NDPS Act, as contended by the appellant in the memorandum of appeal?

ii) Whether the impugned Judgment of Conviction and Order of Sentence passed by the Trial Court suffers from illegality, perversity, or any other infirmity warranting interference by this Court in the exercise of its appellate jurisdiction?

12. The principal ground on which the Judgment of Conviction and Order of Sentence has been assailed is the alleged non-compliance with the mandatory provisions of Sections 42 and 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. According to the learned counsel for the appellant, Section 42 mandates that whenever an empowered officer receives prior information regarding the commission of an offence under the Act, such information must be reduced into writing and forthwith communicated to the immediate superior officer. It is further contended that Section 50 requires the empowered officer, before conducting the personal search of an accused, to inform him of his valuable right to be searched in the presence of a Gazetted Officer or a Magistrate. The appellant contends that these mandatory statutory safeguards have not been complied with in the present case, thereby vitiating the entire search, seizure, and consequential conviction.

13. The learned counsel for the appellant vehemently contended that there has been no due

compliance with the mandatory provisions of Sections 42 and 50 of the NDPS Act while conducting the search and seizure of the alleged contraband. According to him, such non-compliance vitiates the entire prosecution case.

14. Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as follows:

> "42. Power of entry, search, seizure and arrest without warrant or authorisation.—"

15. Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as follows:

> "50. Conditions under which search of persons shall be conducted.—"

16. Placing reliance on the aforesaid provisions, the learned counsel for the appellant submitted that, according to the evidence of the complainant, PW.1 – Chaya Angadi, on 19.01.2017, while she was in her office, she received credible information that a person was illegally

transporting ganja in a Tata Ace vehicle from Hubballi towards Navalgund. Immediately upon receiving the information, she informed her superior officer and also approached the jurisdictional Magistrate, obtained permission to conduct the search, and secured a search warrant, which is marked as Ex.P.1.

17. Section 42 of the NDPS Act mandates that whenever an empowered officer receives prior information regarding the commission of an offence under the Act, such information shall be reduced into writing and forthwith communicated to the immediate superior officer. In the present case, the evidence of PW.1 discloses that immediately after receiving the information, she informed her superior officer and also approached the jurisdictional Magistrate for issuance of a search warrant. During her cross-examination, a suggestion was made on behalf of the accused that the information received by her was not entered in the Station House Diary immediately after its receipt. The said suggestion was specifically denied by

PW.1. On the contrary, she has consistently deposed that immediately after receiving the information, she intimated the same to her superior officer, obtained the necessary permission from the jurisdictional Magistrate, and secured the search warrant before proceeding to conduct the raid. Therefore, the contention of the learned counsel for the appellant that there has been non-compliance with the mandatory requirements of Section 42 of the NDPS Act does not appear to be acceptable, inasmuch as the evidence on record prima facie indicates that the information received was duly communicated to the superior officer and that the search was conducted only after obtaining the requisite authorisation from the jurisdictional Magistrate.

18. The Trial Court, while considering the said contention, has discussed the compliance with the provisions of Sections 42 and 50 of the NDPS Act in paragraph No.22 of the impugned judgment. The Trial Court has observed that the complainant, PW.1, had

obtained a search warrant from the jurisdictional Magistrate before conducting the search of the vehicle. It has further noted that she had secured the presence of independent panch witnesses as well as a Gazetted Officer before proceeding with the raid.

19. The learned counsel for the appellant, however, contended that since the Gazetted Officer had accompanied the raiding party and actively participated in the search and seizure proceedings, the mandatory requirements of Section 50 of the NDPS Act stood violated. According to him, the Gazetted Officer could not have acted in the dual capacity of a Gazetted Officer and a member of the raiding party. It was further argued that the law is well settled that non-compliance with the mandatory provisions governing search and seizure under the NDPS Act vitiates the entire prosecution.

20. The Trial Court, while dealing with the said contention, has observed that the accused was not present

at the spot at the time of the search, as he had abandoned the vehicle and fled from the place immediately after it was intercepted. Consequently, no personal search of the accused was conducted. Therefore, the question of complying with the requirements of Section 50 of the NDPS Act, which applies only to the personal search of a person, did not arise. On a careful reading of the reasoning assigned by the learned Trial Judge, coupled with the evidence of the complainant and Investigating Officer (PW.1), this Court is of the considered opinion that the provisions of Section 42 of the NDPS Act have been duly complied with. Further, since the search in the present case was confined to the vehicle and the bags found therein, and not to the person of the accused, the provisions of Section 50 of the NDPS Act are not attracted to the facts of the present case.

21. The next limb of the argument advanced by the learned counsel for the appellant is that the Trial Court has failed to properly appreciate the oral and documentary

evidence available on record. It is contended that the evidence of the prosecution witnesses is riddled with material contradictions, omissions, and inconsistencies, which strike at the root of the prosecution case. According to the learned counsel, these material discrepancies have not been properly appreciated by the Trial Court while recording the finding of guilt.

22. In order to examine the said contention, this Court has carefully reappreciated the entire evidence adduced by the prosecution. The complainant and Excise Inspector has been examined as PW.1. She has deposed in detail regarding the receipt of credible information on 19.01.2017, the communication of the said information to her superior officer, obtaining permission and a search warrant from the jurisdictional Magistrate, securing the pancha witnesses and the Gazetted Officer, and thereafter proceeding to conduct the raid in accordance with law.

23. PW.1 has further deposed that, immediately after receiving the credible information, she intimated the same to her superior officer, obtained a search warrant from the jurisdictional Magistrate, secured the presence of pancha witnesses, and thereafter proceeded to the spot along with the raiding party. They kept surveillance at the spot, and when the Tata Ace vehicle arrived, they intercepted it. On noticing the raiding party, the driver of the vehicle fled from the spot. Though they attempted to apprehend him, he escaped. Thereafter, the contraband was seized from the vehicle, a seizure mahazar was drawn, representative samples were collected and sealed, and the samples were subsequently forwarded to the Forensic Science Laboratory (FSL) for chemical examination. The relevant documents have been marked as Exs.P.1 to P.45, and the seized articles have been marked as MOs.1 to 10. PW.1 was subjected to a detailed cross-examination. On careful scrutiny of her cross-examination, it is evident that nothing worthwhile has

been elicited to discredit her testimony or to impeach her credibility. On the contrary, a suggestion was put to her by the learned counsel for the accused, as found in paragraph No.24 of her evidence, that the accused had parked his Tata Ace vehicle near the Gram Panchayat Office and had gone to the house of his relatives. The very suggestion itself indicates that the Tata Ace vehicle belonged to the accused and was found at the place of the incident. Though it was suggested that the accused had no connection with the contraband allegedly seized from the vehicle, there is no specific denial regarding the seizure of his vehicle from the spot. This circumstance lends support to the prosecution case.

24. The prosecution has also examined PW.2 – Anandagouda Patil, who was the driver of the official vehicle in which the complainant and the raiding party proceeded to the place of occurrence. His evidence substantially corroborates the testimony of PW.1 with regard to the receipt of information, the conduct of the

raid, interception of the vehicle, and seizure of the contraband. Though PW.2 was subjected to cross-examination, nothing material has been elicited to discredit his testimony.

25. PW.3 – Basavaraj Mugali, an Excise Guard, was also a member of the raiding party and was present throughout the raid. His evidence is in substantial conformity with that of PW.1 regarding the search, seizure, and other consequential proceedings. He was also cross-examined at length. Even during his cross-examination, a suggestion was made on behalf of the accused that the Tata Ace vehicle belonging to the accused had been parked near the Gram Panchayat Office. This suggestion also supports the prosecution case regarding the presence of the accused's vehicle at the place of occurrence.

26. PW.4 – Swapna R.S., the Deputy Superintendent of Excise, has deposed that on

19.01.2017, at about 7.00 p.m., she received information from PW.1, the Excise Inspector, regarding the illegal transportation of ganja in a Tata Ace vehicle. Thereafter, she accompanied the Excise Inspector and other members of the raiding party to conduct the raid. Her testimony substantially corroborates the evidence of PW.1 in all material particulars relating to the receipt of information, the raid, the search, and the seizure proceedings. She was also cross-examined at length; however, nothing substantial has been elicited to discredit her testimony or to create any doubt regarding the prosecution case.

27. PW.4 was subjected to cross-examination. A suggestion was put to her that, although the accused had not committed any offence, a false case had been foisted against him. The said suggestion was specifically denied by PW.4.

28. The prosecution has also examined PW.5 – Sayyed Ibrahim, who subsequently took charge as the

Excise Sub-Inspector after PW.1. He conducted the further investigation in the case and, upon completion of the investigation, filed the charge sheet before the jurisdictional Court.

29. PW.6 – H.Kotresh, the Assistant Chemical Examiner working in the Forensic Science Laboratory (FSL), has deposed regarding the examination of the seized samples and the issuance of the Chemical Examination Report. He has spoken about the receipt of the sealed samples, the procedure adopted for their examination, and the opinion rendered by him in his report.

30. PW.6 was also cross-examined by the learned counsel for the accused. It was suggested to him that he had neither received the material objects nor examined the samples and that he had issued a false report at the instance of the Investigating Officer. PW.6 categorically denied the said suggestions. Nothing material has been

elicited during his cross-examination to discredit his evidence or the authenticity of the Chemical Examination Report.

31. One of the grounds urged in the memorandum of appeal is that the Trial Court failed to consider the explanation offered by the accused in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973. This Court has carefully perused the statement of the accused recorded under Section 313 Cr.P.C. It is evident that, except answering the incriminating circumstances by stating that they were "false", the accused has not offered any plausible explanation or defence with regard to the prosecution case.

32. The learned counsel for the appellant further contended that, since the accused had allegedly been involved in an earlier case, the investigating agency, taking advantage of his antecedents, has falsely implicated

him in the present case though he had not committed any offence. This contention does not merit acceptance. As discussed hereinabove, the evidence on record clearly establishes that the Investigating Officer has substantially complied with the mandatory requirements of Sections 42 and 50 of the NDPS Act. The prosecution witnesses have consistently deposed regarding the receipt of credible information, the conduct of the raid, the seizure of the contraband from the vehicle, the drawing of the mahazar, the collection of representative samples, and the forwarding of the samples for chemical examination. Their evidence has remained consistent on all material particulars. Though they were subjected to lengthy cross-examination, nothing substantial has been elicited to discredit their testimony or to probabilise the defence version. The learned Trial Judge has meticulously appreciated both the oral and documentary evidence available on record and has rightly come to the conclusion

that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

33. Upon a careful re-appreciation of the entire oral and documentary evidence available on record, this Court does not find any illegality, perversity, or infirmity in the appreciation of evidence by the learned Trial Judge. The findings recorded by the Trial Court are based on proper appreciation of the evidence and are supported by the material available on record. The prosecution has successfully established the guilt of the accused beyond reasonable doubt. The contentions urged by the appellant do not merit acceptance, and the grounds raised in the memorandum of appeal are devoid of merit. Consequently, the appeal is liable to be dismissed. Accordingly, Point Nos.1 and 2 framed for consideration are answered in the Negative.

34. In the result, this Court proceeds to pass the following:

ORDER

i) The appeal is dismissed.

ii) The judgment of conviction and order of sentence dated 08.12.2017, passed by the Principal Sessions and Special Judge, Dharwad, in Spl. NDPS (CC) No.3/2017 is hereby confirmed.

iii) Trial court is directed to secure the presence of the accused by issuing NBW for undergoing sentence and intimate to this office about the due compliance.

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

MRK
Ct-cmu