



2026:KER:56097

Crl.Appeal No.23/2016

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 24TH DAY OF JULY 2026 / 2ND SRAVANA, 1948CRL.A NO. 23 OF 2016

CRIME NO.518/2013 OF Edakkara Police Station, Malappuram

AGAINST THE JUDGMENT DATED 30.12.2015 IN SC NO.63 OF 2013 OF
SPECIAL COURT (NDPS ACT CASES), VADAKARAAPPELLANT/ACCUSED:IBRAHIM @ BAVA
AGED 60 YEARS
S/O. SAITHALIKUTTY, MUKKATTIL HOUSE,
PARANGATHUPARAMBIL, CHEMBRA, MYLADIKUNNU, TIRUR,
MALAPPURAM DISTRICT.

BY ADV SHRI.SUNNY MATHEW

RESPONDENT/S:

- 1 THE SUB INSPECTOR OF POLICE, EDAKKARA POLICE STATION
EDAKKARA POLICE STATION, MALAPPURAM DISTRICT-676505.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031.

PUBLIC PROSECUTOR SRI M A SHIHAB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.07.2026,
THE COURT ON 24.07.2026 DELIVERED THE FOLLOWING:



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: 2 :

“C.R”

A. BADHARUDEEN, J.

Crl.Appeal No.23 of 2016

Dated this the 24th day of July, 2026

J U D G M E N T

This appeal has been filed by the sole accused in S.C.No.63/2013 on the files of the Special Court under the Narcotic Drugs and Psychotropic Substances ('NDPS' for short hereafter) Act Cases, Vadakara, challenging the judgment in the above case dated 30.12.2015 imposed against him.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor in detail. Perused the records of the Special Court and the verdict impugned.

3. The prosecution case is that the accused possessed 1.355 kg of ganja at 14.00 hours on 30.09.2013 against the prohibition contained in the NDPS Act and he was nabbed red-handed. Accordingly, the



prosecution alleges commission of offence punishable under Section 20(b)(ii)(B) of the NDPS Act, by the accused.

4. The learned Special Judge proceeded with trial after completing the pre trial formalities. During trial PW1 to PW7 were examined and Exts.P1 to P13 were marked on the side of the prosecution. M.O1 to M.O5 were also marked. No defence evidence was adduced. Finally the learned Special Judge found that the prosecution succeeded in proving the ingredients for the offence punishable under Section 20(b)(ii)(B) and accordingly he was convicted and sentenced as under:

“1) Accused is sentenced to undergo rigorous imprisonment for 2 (two) years and also to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) in default, R.I. for three months.

2) Set off u/s 428 of Cr.P.c is allowed.”

5. While attempting to upset the verdict impugned, it is submitted by the learned counsel for the appellant/accused that the prosecution case failed to be proved by the prosecution and the evidence relied on by the learned Special Judge to find the commission of offence punishable under Section 20(b)(ii)(B) of the NDPS Act by the accused is insufficient to fasten criminal culpability upon the appellant/accused.



Therefore, the verdict would require interference to record acquittal of the appellant/accused. When the learned counsel for the appellant/accused was asked to justify the said contention, in fact, he failed in his endeavour, though he argued that there was non compliance of Section 50 of the NDPS Act. Later the learned counsel for the appellant/accused submitted that leniency should be shown in the matter of sentence and prayed for reduction in the sentence.

6. The learned Public Prosecutor strongly supported the verdict and submitted that in this case all statutory formalities under Sections 41 and 42 of the NDPS Act have been complied and there was no search of the person and Section 50 of the NDPS Act has no application. Thus the learned Public Prosecutor submitted that the verdict impugned doesn't require any interference. Points arise for consideration are:

(i) Whether the Special Court is right in holding that the appellant/accused committed the offence punishable under Section 20(b)(ii)(B) of the NDPS Act?

(ii) Is it necessary to interfere with the impugned judgment



in any manner?

(iii) The order to be passed?

Points (i) to (iii)

7. The learned Special Judge relied on the evidence of PW3, supported by the evidence of PW4, PW6 and PW7, to find commission of offence punishable under Section 20(b)(ii)(B) of the NDPS Act, by the accused. According to PW3, while he was working as S.I of Police, Edakkara on 30.09.2013, he got information at 14.00 hours that a person wearing green striped shirt and maroon coloured dhoti was carrying a big shopper bag with ganja near a waiting shed on the right side of a road at Karappuzha angadi in Moolanaadam Panchayat. He entered the information in the GD as Serial No.15 and thereafter forwarded Ext.P3 report under Section 42 of the NDPS Act to the C.I and according to him, Ext.P3 would show that the C.I had received the same. Accordingly, he had started at 14.10 hours and reached the place at 14.30 hours. Then he had found the person and restrained him. Then he had enquired about his name and details through the witnesses and introduced him as the S.I of



Police and he informed the accused of his right to be searched in the presence of a gazetted officer or a Magistrate. Then the accused made use of his option under Section 50, which is marked as Ext.P4. Accordingly in the presence of Tahsildar, a gazetted officer, he was searched and it was found that ganja had been kept in a big-shopper, wrapped in a cover using newspaper and accordingly the accused was arrested. He identified Ext.P5 as arrest memo, Ext.P6 as inspection memo, and Ext.P7 as arrest notice. Then he had measured the weight of the ganja and found the same to be 1.355 kg. He had collected sample containing 80g of ganja and sealed the same after signing by himself, the accused and the witnesses on it and put EDK PS seal marking S1 and S2. Then he had marked the remaining ganja as Ext.P1. The big shopper, plastic cover and newspaper were also seized on preparing mahazar and the same was identified as Ext.P8. Accordingly he had reached the Police Station and registered Ext.P9 FIR and thus he had forwarded Section 57 report to the CI and had sent receipt to the C.I. He identified the ganja marked as M.O.1, the green polythene cover as M.O.2, the newspaper as M.O.3, the plastic cover as M.O.4, and



the big shopper as M.O.5.

8. During examination of PW4, the SCPO of Edakkara Police Station, he supported the version of PW3 regarding search and seizure. Though PW3 and PW4 were subjected to searching cross examination with a view to shake their versions regarding possession of M.O1 ganja by the accused and its seizure, nothing extracted to disbelieve their version. Thus evidence of PW3 would show that there is proper compliance of Sections 42, 50 as well as 57 and that is the reason why the learned counsel for the appellant failed to argue any anomaly in the process of detection or any anomaly in the prosecution case.

9. Apart from the evidence of PW3 and PW4, PW5, the gazetted officer in whose presence the search was conducted by PW3, also supported the prosecution case. It was PW7, who conducted the investigation in this case and he deposed that as per Ext.P11, he had produced Ext.P1 site plan before the court. He identified Ext.P12 as forwarding note and Ext.P13 as chemical analysis report showing that the sample contained ganja.



10. In fact, the evidence discussed and recorded by the learned Special Judge would show that the accused was nabbed on finding conscious possession of 1.355 kg of ganja at 14.20 hours on 30.09.2023. The prosecution has satisfactorily established its case so as to apply the presumption under Section 35 of the NDPS Act. Thus the contentions raised by the learned counsel for the appellant to upset the verdict impugned, including non-compliance of Section 50 of the NDPS Act, would necessarily fail. Therefore, the finding of guilt recorded by the learned Special Judge does not warrant any interference at the instance of this Court. Coming to the sentence, in consideration of the prayer advanced by the learned counsel for the appellant, I am inclined to modify the sentence.

11. Therefore, this Criminal Appeal stands allowed in part. Accordingly, while confirming the conviction, the sentence imposed against the accused is modified and he is sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of Rs.1 lakh and in default of payment of fine, to undergo rigorous imprisonment for a



period of four months.

12. The order suspending the sentence and granting bail to the appellant shall stand vacated and the bail bond executed by the appellant shall stand cancelled. The appellant is directed to surrender before the Special Court under the NDPS Act Cases, Vadakara, to undergo the modified sentence.

Registry is directed to forward a copy of this judgment to the Special court concerned for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/