



2026:KER:45583

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23RD DAY OF JUNE 2026 / 2ND ASHADHA, 1948

CRL.A NO. 120 OF 2016

AGAINST JUDGMENT DATED 25.01.2016 IN SC NO.67 OF 2014 OF
SPECIAL COURT (NDPS ACT CASES), VADAKARA

APPELLANTS/ACCUSED 1, 3 AND 4:

- 1 SAHID K.
AGED 30 YEARS
S/O. HASHIM, MADEENA VILLA, KANIYIL PEEDIKA, KAKKAD
POST, MALAPPURAM DISTRICT-676306.
- 2 MUNSHEER K.P.
AGED 33 YEARS
S/O. MUSTHAFI, AYISHA MANZIL, KURUVA, KADALAYI POST,
KANNUR DISTRICT-670007.
- 3 LATHEEF K.
AGED 30 YEARS
SO. MAJEED, KUTTIERI HOUSE, NEAR SADULIPPALI, KOTTALI
POST, KANNUR DISTRICT-670005.
BY ADV SRI.P.K.RAVISANKAR

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY SR PP VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16.06.2026, ALONG WITH CRL.A.139/2016, THE COURT ON 23.06.2026
DELIVERED THE FOLLOWING:



2026:KER:45583

Crl.A.Nos.120 & 139 of 2016

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23RD DAY OF JUNE 2026 / 2ND ASHADHA, 1948

CRL.A NO. 139 OF 2016

AGAINST THE JUDGMENT DATED IN SC NO.67 OF 2014 OF SPECIAL COURT

(NDPS ACT CASES), VADAKARA

APPELLANT/2ND ACCUSED:

BASHEER V @ STYLAN BASHEER
AGED 44 YEARS
S/O.SHAMSUDHEEN, VALIYAKATH HOUSE,
CHALIL, THALASSERY, NOW RESIDING AT T.K.HOUSE,
BHANU ROAD, CHALAD, KANNUR DISTRICT.

BY ADV SRI.T.G.RAJENDRAN

RESPONDENTS/STATE:

- 1 SUB INSPECTOR OF POLICE, KANNUR TOWN POLICE STATION
PIN-670001.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16.06.2026, ALONG WITH CRL.A.120/2016, THE COURT ON 23.06.2026
DELIVERED THE FOLLOWING:



Crl.A.Nos.120 & 139 of 2016

"CR"

COMMON JUDGMENT

Dated this the 23rd day of June, 2026

Accused Nos.1, 3 and 4 in S.C.No.67 of 2014 on the files of the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), Vatakara has filed Crl.A.No.120 of 2016 challenging the judgment rendered against them on 25.01.2016. The second accused therein is the appellant in Crl.A.No.139 of 2016 and he also assails the said judgment.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor in detail. Perused the records of the Special Court.

3. The prosecution case is that the accused Nos.1 to 4 consciously possessed 3 kgs of ganja at 12.30 hours on 13.06.2014 against the prohibition contained in the NDPS Act and thereby they have committed the offence punishable under Section



Crl.A.Nos.120 & 139 of 2016

20(b)(ii)(B) r/w 29 of NDPS Act.

4. The Special Court, recorded the evidence on completion of the pre-trial requisites. PW1 to PW7 were examined, Exts.P1 to P25 and MOs.1 to 9 series were marked on the side of the prosecution. On the side of the defence, Ext.D1 contradiction got marked during cross-examination of PW5.

5. The learned Special Judge, on appreciation of evidence, found that accused Nos.1 to 4 were guilty for the offence punishable under Section 20(b)(ii)(B) r/w 29 of NDPS Act and accordingly, accused Nos.1 to 4 were convicted as under;

"1) Accused 1 to 4 are sentenced to undergo rigorous imprisonment for 3 (three) years each and also to pay a fine of Rs.1,00,000/- (Rupees one lakh only) each in default of which they shall suffer rigorous imprisonment for three months each under Section 20(b)(ii)(B) r/w 29 of NDPS Act.

2) Set off u/s 428 of Cr.P.C. is allowed."



6. While assailing the judgment, it is submitted by the learned counsel for the appellants that, in the matter of recovery, PW2 and PW3, the independent witnesses turned hostile to the prosecution, though recovery effected was supported by PW5, the detecting officer as well as PW6 the senior civil police officer, who accompanied PW5, apart from the evidence of PW7 the investigating officer. It is also submitted that in the instant case, Ext.P18 property list was produced before the magistrate court on 14.06.2014. But the magistrate returned the same as endorsed therein 'to be produced before the Special Court under the NDPS Act on 16.06.2014. PW5 deposed that before production of the contraband before the NDPS Court as per Ext.P18, after the said order of return, the same was in the custody of the writer of the police station and PW7 deposed that it was in the custody of PW5. According to the learned counsel



for the appellants, their evidence would show a doubt regarding the custody of the contraband in between 14.06.2016 to 16.06.2016 and the same is a doubtful circumstance to be adjudged in favour of the appellants. It is also submitted that as per Ext.P24 chemical analysis report, samples reached the laboratory was weighed as 70 and 90 grams respectively, though PW5 collected 100 grams each for sending the samples for chemical analysis. Therefore, the reduction in weight, when the samples reached the FSL is also fatal to the prosecution case. The learned counsel also argued that in this case, even though the recovery was from a vehicle, the vehicle was not seized and the prosecution failed to explain how the vehicle related to this crime. Thus, the learned counsel for the appellants seek interference in the verdict under challenge, to set aside the conviction and sentence imposed against the appellants.



Crl.A.Nos.120 & 139 of 2016

7. Whereas it is submitted by the learned Public Prosecutor that none of the contentions advanced by the learned counsel for the appellants would sustain. According to the learned Public Prosecutor, the learned Special Judge correctly evaluated the evidence and discussed all these contentions in the judgment and negatived the same. Therefore, both appeals are liable to be dismissed.

8. Adverting to the rival contentions, the questions arise for consideration are;

(i) Whether the Special Judge is justified in holding that accused Nos.1 to 4 committed the offence punishable under Section 20(b)(ii)(B) r/w 29 of NDPS Act?

(ii) It is necessary to interfere with the verdict impugned?

(iii) Order to be passed.



Crl.A.Nos.120 & 139 of 2016

Point Nos.(i) to (iii)

9. On reading the verdict impugned, the Special Judge mainly relied on the evidence of PW5 supported by the evidence of PW6 and PW7 along with other evidence to record the conviction and sentence. PW5 deposed that on getting credible information that four accused persons came in a blue coloured Omni van bearing registration No.KL 13Q 234 were selling ganja, he recorded the information in the GD and forwarded Ext.P7 Section 42 report to his superior officer and proceeded to the place, where all the accused were found inside the Omni Van. The appellants were found sitting inside the vehicle when the police party reached there. PW5 asked the accused persons to get down from the Omni Van and after introducing himself to the accused persons, he informed them that he came over there on knowing about the information that they were selling ganja from the vehicle and that



he wanted to search them. Then he apprised them of their right to be searched in the presence of a Gazetted Officer or a Magistrate. When the accused persons replied that they need not be searched in the presence of a Gazetted Officer or a Magistrate and that they might be searched by him (PW5), PW5 after obtaining consent given by A1 to A4 in this regard, marked as Ext.P8 to P11 respectively searched the accused persons and the vehicle. It was when A1 was searched Rs.17,500/- and a mobile phone were seized, from A3 Rs.3000/- and a mobile phone were seized and a mobile phone was found in the body of A2. It was thereafter the police party searched the Omni Van and then a polythene cover was found under the back seat of the vehicle. The polythene cover contained a packet of 3 Kgs of ganja.

10. PW6 who accompanied PW5, fully corroborated the version of PW5 in the matter of detection and



recovery of the contraband. Although PW5 and PW6 were subjected to searching cross-examination, nothing elicited to discard their version.

11. Enmity between the detecting officer and the accused persons was pointed out during cross-examination of PW5 as the reason to implicate them in this crime. The said suggestion was emphatically denied by PW5. Thus, on all material particulars, the evidence of PW5 and PW6 is very consistent and the enmity levelled against them could not be found even on the basis of remote evidence. In fact, the learned Special Judge accepted their evidence to hold that the prosecution succeeded in proving the guilt of the accused/appellants. When the evidence of PW5 and PW6 is found acceptable, the fact that the independent witnesses did not support the prosecution would not be fatal to the prosecution case, since mere hostility of independent witness or witnesses does not by itself



Crl.A.Nos.120 & 139 of 2016

efface the prosecution case proved through the official witnesses.

12. PW7 who conducted the investigation also supported the prosecution case. In paragraph 27 of the judgment, the learned Special Judge considered the weight difference in samples and observed as under;

"27 A contention also has been raised from the side of defence that it was not the samples drawn at the spot that had reached the laboratory. According to PW5, 2 samples of 100 gm each were taken. But in Ext.P24 chemical examiner's report what was received there was 70 and 90 gm respectively. The question is whether the said aspect can be taken to be fatal to the prosecution case. In a case **(Dehal Singh and Another v. State of Himachal Pradesh, 2010 KHC 4631)** where a difference of 15 grams was found when the sample reached the laboratory, the Hon'ble Supreme Court observed that that was not of much significance as unlike the other weighing scale the weight in the laboratory recorded with precision scale. So the above aspect also need not be given much weight."



Crl.A.Nos.120 & 139 of 2016

The learned Special Judge also considered the impact of Section 35 of the NDPS Act with reference to the Apex Court judgments as stated in paragraph 29 and 30 reads as under;

"29. Interpreting the Section 35 of the Act, the Hon'ble Supreme Court in **Dharmapal Singh v. State of Panjab] [2010(9)SCC 608]** has held as follows:

"15. From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to satisfactorily account for the possession of opium."

30. The argument that was advanced from



the side of accused persons is that prosecution has not proved any conscious possession as no contraband was seized from the accused persons where as it was from the vehicle the contraband is alleged to have been seized. The prosecution by placing sufficient materials has established that all the accused persons were found in the vehicle. Al was found in the driver's seat. It was under the back seat of the vehicle contraband was seized. It is true, PW5 was made to state in cross examination that it was not as pointed out by the accused persons the contraband was seized from the vehicle. The Hon'ble Supreme court while dealing with a case where accused persons were found travelling in a car from which contraband was seized observed in para 22 in Dehal Singh and another v. State of Himachal Pradesh [2010 KHC 4631] that:-

"22. Both the appellants were found travelling in the car from which Charas was recovered and, therefore, they were in possession thereof. They were knowing



each other. They were not travelling in a public transport vehicle. Distinction has to be made between the accused travelling by public transport vehicle and private vehicle. It needs no emphasis that to bring the offence within the mischief of S.20 of the Act possession has to be conscious possession. S.35 of the Act recognizes that once possession is established the court can presume that the accused had a culpable mental state, meaning thereby conscious possession. Further the person who claims that he was not in conscious possession has to establish it. Presumption of conscious possession is further available under S. 54 of the Act, which provides that accused may be presumed to have committed the offence unless he accounts for satisfactorily the possession of contraband. The view which we have taken finds support from a judgment of this Court in the case of Madan Lal and Another v. State of H.P., 2003 KHC 1550: 2003(7) SCC 465: AIR 2003 SC 3642: 2003SCC (Cei) 1664 :2003 Cri.LJ 3868, where in it has been held as follows:

'28. Once possession is established, the



Crl.A.Nos.120 & 139 of 2016

person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is with in his special knowledge. S. 35 of the Act give a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of S. 54 where also presumption is available to be drawn from possession of illicit articles'.

13. As regards to non-compliance of Section 52A of the NDPS Act is concerned, heavy reliance has been placed by the learned Public Prosecutor to the decision reported in ***Bharat Aambale v. State of Chhattisgarh [(2025) INSC 78]*** whereby the Apex Court summarized the conclusions regarding compliance of Section 52A as under;

"50. We summarize our final conclusion as under:

(I) Although S.52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards



in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under S.52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under S.52A of the NDPS Act and the Rules/Standing Order(s) thereunder



would have to be mandatorily treated as primary evidence as per S.52A sub section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/ Rules in terms of S.52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non compliance of the procedure under S.52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record



adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of S.52A of the NDPS Act.

(VII) Non compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in S.52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material



under S.54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non compliance of S.52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate noncompliance of S.52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of S.52A of the NDPS Act OR (ii) satisfy the court that such non - compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

14. When this judgment is pointed out, the learned counsel for the appellants placed decision



Crl.A.Nos.120 & 139 of 2016

of the Apex Court in **Rajwant Singh v. State of Haryana [2025 KHC 7071]** where the Apex Court referred **Bharat Aambale** (supra) and held as under;

"10. From the above exposition of law, it is clear that the initial burden lies on the accused to first lay the foundational facts to show that there was non compliance of S.52A on a preponderance of probabilities, either by leading evidence of its own or by relying upon the evidence of the prosecution. In the present case, no question whatsoever was put by the defence counsel to PW -7 as regards S.52A of the NDPS Act. Moreover, apart from a mere bald assertion that there has been a contravention of the mandate of S.52A of the NDPS Act, nothing cogent has been pointed out to us by the appellant herein that would show that there had been a violation of the requirements of S.52A of the NDPS Act."

15. On reading Clauses (v) (vi) and (ix), the law regarding the requirements of S.52A is well settled. That is to say mere non compliance of the procedure under S.52A or the Standing



Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses. If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of S.52A of the NDPS Act. Further, the initial burden will lie on the accused to first lay the foundational facts to show that there was non-



compliance of S.52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities. Thus, on the facts and evidence available in this case, particularly when MO1, the packets containing balance ganja was tendered in evidence which would inspire confidence of this Court would satisfy the conscious possession of ganja by the appellants. Therefore, this challenge is set at rest.

16. According to the learned counsel for the appellants in this case, though the contraband was produced before the Magistrate Court on 14.06.2016, the same was returned for production before the NDPS Special Court on 16.06.2016 and in the meantime, the same was in the custody of the Writer as stated by PW5 and in the custody of PW5 as stated by PW7. Therefore, it could not be ensured that the contraband seized safely reached before



the Special Court. In view of the matter, the benefit of doubt should be adjudged in favour of the appellants. In this regard, the learned counsel for the appellants placed another decision of the Apex Court in ***Surepally Srinivas v. State of Andra Pradesh (Now State of Telangana) [2025 KHC 7234]***, wherein the Apex Court held that;

"14. In the present case, from the evidence on record, it can be seen and it is clear that the seized contraband was not properly sealed. Coupled with this is the fact of the seized contraband not being produced before the trial court prior to 3rd July, 2010. It is difficult to accept the prosecution case that though there may not have been strict compliance of Standing Order No.1/89, the seized contraband was not tampered at all. Keeping of the seized contraband by PW-3 in a separate room in his office for fifteen days could give rise to an allegation that the seized contraband was by itself substituted and some other items planted to falsely implicate the accused. To avoid suspicious circumstances and to ensure fair procedure in



respect of search and seizure, it is always desirable to follow the standing order which provides suitable guidance for the officers investigating crimes under the NDPS Act. Should there be any departure, the same must be based on justifiable and reasonable grounds. We are, satisfied, on appreciation of the evidence on record, that the possibility of tampering during this fifteen - day period cannot be totally ruled out and that not only has there been no substantial compliance of the standing order, the departure has also not been justified."

17. In addition to that, the learned counsel for the appellants has placed another decision in ***Dehal Singh and Another v. State of Himachal Pradesh [2010 KHC 4631]*** which has been relied on by the learned Special Judge to negate the contentions of the appellants regarding the weight difference in the contraband. According to the learned counsel for the appellants, the ratio in ***Dehal Singh's*** case (supra), could not be applied in this case. On reading the observations of the Apex Court in



Dehal Singh's case, referring to the judgment in **Noor Aga v. State of Punjab and Another [2008 KHC 5054]** and in paragraph 11, it was held as under;

"11. It is common knowledge that weighing scale and weight kept in the grocery - shop are not of such standard which can weigh articles with great accuracy and therefore difference of 15 gms. in weight, in the facts and circumstances of this case, is not of much significance. Sample was taken by a common weighing scale and weight found in a grocery shop, whereas the weight in the laboratory recorded with precision scale. This would be evident from the fact that the weight of the sample recorded in the laboratory was 65.5606 gms. In this background, small difference in weight loses its significance, when one finds no infirmity in other part of the prosecution story."

Thus, weight difference in the sample collected to be adjudged based on the facts in each case considering the possibility of showing weight difference by different weighing machines used and the possibility of weight loss in between the date



Crl.A.Nos.120 & 139 of 2016

of collection and date of reaching the FSL due to dryness of the contraband. When ganja is the contraband, possibility of dryness is always there. Most importantly, here the samples were collected in a tamper proof manner and the expert never opined any discrepancy in the samples reached the FSL. Therefore, the weight difference of the sample in this case is of no serious consequence.

18. The learned counsel for the appellants has placed decision in ***Makhan Singh v. State of Haryana [2015 KHC 4314]*** to contend that the prosecution is duty bound to adduce cogent evidence to show that the alleged vehicle, on which person was alleged to be carrying the contraband, belonged to him and failure to adduce the said evidence with regard to ownership/possession of the vehicle and connecting the person with the vehicle, is fatal to the prosecution case. In this connection, PW4, relative of the first accused was examined and Ext.P25 RC



particulars were tendered in evidence. Even though PW4 turned hostile, he had stated that he came to know that the first accused was arrested from the vehicle and Ext.P25 is the RC particulars in the name of Nizamudin, cousin brother of PW4. That apart, in the instant case, at the time of detention, the accused persons were found inside the vehicle and on searching of the vehicle, contraband was seized. Thus, possession of the vehicle by the accused is well established by the evidence of the detecting officer, PW5 and PW7. Therefore, merely because PW4 turned hostile to the prosecution, it could not be held that the prosecution failed to adduce evidence with regard to the possession of the vehicle. If a proposition is laid holding the view that when contraband was recovered from a vehicle, its ownership by the offender has relevance, persons carrying contraband in stolen vehicle and vehicles possessed without



Crl.A.Nos.120 & 139 of 2016

any authorisation and by using fake registration numbers would escape from prosecution after carrying the contraband. Therefore, when contraband was recovered from a vehicle on finding possession of the same by the accused, the requirement of possession said to be satisfied, even without proof of the ownership of the same. The decision of the Apex Court in ***State of Rajasthan v. Babu Lal [(2009) 14 SCC 215]*** has been placed to contend that Section 42(2) of the NDPS Act failed to be complied. In this connection, the learned Public Prosecutor has given reliance on Ext.P7 report given by PW5 and forwarded to PW7. Therefore, this contention is found to be bereft of merit.

20. Thus, on re-appreciation of evidence, it is held that the learned Special Judge has rightly found that the accused committed the offence punishable under Section 20(b)(ii)(B) r/w 29 of NDPS Act and the said conviction does not require



Crl.A.Nos.120 & 139 of 2016

interference.

Coming to the sentence, the same also found to be reasonable and is confirmed accordingly.

In the result, both appeals are dismissed. The bail bond executed by the appellants is cancelled with direction to them to surrender before the investigating officer forthwith. On failure to surrender, the Special Judge is directed to execute the sentence without fail.

The Registry is directed to forward a copy of this judgment to the Special Court, Vatakara for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

scl