

Nagappa Laxmappa Janawad vs The State Of Karnataka on 21 February, 2025

Author: Hemant Chandangoudar

Bench: Hemant Chandangoudar

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NC: 2025:KHC-D:3570
CRL.P No. 100806 of 2025

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 21ST DAY OF FEBRUARY, 2025
BEFORE
THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR
CRIMINAL PETITION NO. 100806 OF 2025 (482(Cr.PC)/528(BNSS))

BETWEEN:

1. NAGAPPA LAXMAPPA JANAWAD
AGE. 45 YEARS, OCC. AGRICULTURIST,
R/O. MUGALKHOD, TQ. MUDHOL,
DIST. BAGALKOT-587113.
2. SRI. NINGAPPA S/O. BASAPPA KESARAGOPPA
AGE. 52 YEARS, OCC. AGRICULTURIST,
R/O. MUGALKHOD, TQ. MUDHOL,
DIST. BAGALKOT-587113.

...PETITIONERS

(BY SRI. HARSHAWARDHAN M.PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY MUDHOL POLICE STATION,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH-560011.

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MAHENDRAKUMAR
Location: HIGH
COURT OF
KARNATAKA

DHARWAD BENCH
Date: 2025.02.25

2. AJITKUMAR HOSMANI
AGE. MAJOR, OCC. POLICE SUB-INSPECTOR,

R/O. MUDHOL PS., TQ. MUDHOL,

DIST. BAGALKOT-587313.

18:00:18 +0530

R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...RESPONDENTS

(BY SRI. T.HANUMAREDDY, AGA FOR R1)

THIS CRIMINAL PETITION IS FILED U/SE. 482 OF CR.P.C. (U/S. 528 OF BNSS, 2023) SEEKING TO, QUASH THE ENTIRE PROCEEDINGS IN SPL. CASE NO. 5006/2024 PENDING ON THE FILE OF I ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOT SITTING AT JAMAKHANDI (MUDHOL PS CRIME NO. 42/2024) FOR THE OFFENCE P/U/SEC. 15(C) OF NDPS ACT AGAINST THE PETITIONERS (ACCUSED NO.1 AND 2).

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THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

Learned AGA for respondent - State.

2. The petitioners/accused Nos. 1 and 2, who are facing trial for offences punishable under Section 15C of the NDPS Act, have approached this Court seeking relief.

3. The prosecution alleges that on 16.02.2024, at about 9:05 AM, the complainant received credible information stating that Sri. Nagappa Janwad, Sri. Ningappa Kesarkoppa, and Sri. Sangappa Kumbar were illegally cultivating poppy plants on their land without obtaining permission from the competent authority. The complainant, a Police Sub-Inspector, after informing the Circle Inspector, conducted a raid on the said lands along with panchas and a Gazetted Officer. Upon investigation, it was found that poppy plants were indeed being grown on the land.

4. The prosecution further alleges that the total weight of the poppy plants was approximately 182 kg, and after separating the fruits from the plants, the weight was reduced to 34 kg. The accused Nos. 1 and 2 are alleged to be the owners of the land where the poppy plants were cultivated.

5. The learned counsel for the petitioners argues that upon receiving credible information, the concerned Police Sub-

NC: 2025:KHC-D:3570 Inspector failed to record the information in writing, as mandated by Section 42(1) of the NDPS Act.

6. He further submits that the Police Sub-Inspector did not communicate the recorded information to his immediate official superior within 72 hours, as required under Section 42(2) of the NDPS Act. The violation of these mandatory provisions vitiates the trial, and therefore, the continuation of criminal proceedings would amount to an abuse of the process of law.

7. In support of his arguments, the learned counsel relied on the following judgments:

1. Roy V.D. vs. State of Kerala - (2000) 8 SCC 590

2. Najmunisha vs. State of Gujarat - 2024 SCC OnLine SC 520

8. On the other hand, the learned Additional Government Advocate (AGA) for the respondent-State contends that whether there has been substantial compliance with Section 42 of the NDPS Act is a matter to be considered during the trial. He further submits that non-compliance with this provision does not necessarily vitiate the trial and, therefore, seeks the dismissal of the petition.

9. Having considered the submissions of the learned counsel for both parties, the following provisions of the NDPS Act, 1985, are relevant to the case:

Section 42 - Power of Entry, Search, Seizure, and Arrest Without Warrant NC: 2025:KHC-D:3570 • Section 42(1) mandates that when a police officer receives information regarding any narcotic-related offence under this Act, the information must be recorded in writing.

• Section 42(2) stipulates that if an officer records such information in writing under Sub-Section (1), a copy of the recorded information must be sent to his immediate official superior within seventy-two hours.

6.2 Section 50 - Conditions for Search of a Person • Section 50 of the NDPS Act, 1985, lays down the procedure for searching a person. It states that before conducting a personal search under Sections 41, 42, or 43, the officer must inform the person of their right to be taken, without unnecessary delay, to the nearest Gazetted Officer or Magistrate if they so require.

10. In the present case, it is undisputed that the Police Sub-Inspector/complainant, upon receiving information that the accused were cultivating poppy plants on their land, did not record the information in writing as required under Section 42(1) of the NDPS Act.

11. Further, the seizure panchnama indicates that the complainant conducted the search without informing the petitioners of their rights, as required under Section 50 of the NDPS Act.

12. Additionally, Section 42(2) mandates that an officer who records information under Section 42(1) must inform his superior officer within 72 hours. However, in this case, the complainant neither recorded the reasons in writing nor informed his superior officer about the cultivation of

poppy plants on the petitioners' land.

11. The Hon'ble Supreme Court in Roy V.D. (supra) has ruled that non-compliance with the mandatory provisions of Section 42 NC: 2025:KHC-D:3570 of the NDPS Act, 1985 vitiates the trial. In para-18, it was held that Section 482 of the Cr.P.C. must be exercised by the High Court to prevent the abuse of the process of any court or to secure the ends of justice when the search and seizure were conducted in violation of Sections 42 and 42(1) of the NDPS Act, 1985.

12. The Hon'ble Supreme Court in Najmunisha (supra) observed that in a case involving explicit non-compliance with the statutory requirements under the NDPS Act, 1985, the trial would be vitiated, as seen in Chhunna alias Mehtab vs. State of Madhya Pradesh - (2002) 9 SCC 363.

13. In the case of State of Punjab vs. Balbir Singh - (1994) 3 SCC 299, the Apex Court ruled that the provisions contained in Section 42 are mandatory, and contravention of the same would be fatal to the prosecution case and vitiate the trial.

14. In Ritesh Chakarvarti vs. State of M.P. (2006) 12 SCC 321, the Apex Court held that searches should normally be conducted by a Magistrate or a Gazetted Officer, and even the presence of a Gazetted Officer in the raiding team would not suffice to meet the requirements of Section 50 of the NDPS Act, 1985.

15. However, in the case of State of Punjab vs. Baldev Singh- (1999) 6 SCC 172, the Apex Court ruled that whether or not the safeguards provided in Section 50 have been duly observed must be determined by the court based on the evidence led at the trial, and it would not be permissible to cut short a criminal trial. Therefore, Section 50 of the NDPS Act, 1985, would not render the trial vitiated. Nonetheless, the continuation of criminal proceedings against the petitioners would constitute an abuse of the legal process due to non-compliance with the mandatory provision contained in Section 42(1) of the NDPS Act, 1985.

16. In light of the legal principles established in the aforesaid cited decisions, since the mandatory provisions of Sections 42(1) and 42(2) of the NDPS Act were not complied with, the registration of the FIR by respondent No.1 for offences punishable under Sections 22(b) and 22(c) of the NDPS Act, 1985, and the subsequent trial stand vitiated.

ORDER

i. Accordingly, petition is allowed.

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ii. The impugned proceeding in special case

No.50064/2024 on the file of I Addl. District and Sessions Judge, sitting at Jamkhandi is hereby quashed.

Sd/-

(HEMANT CHANDANGOUDAR) JUDGE TIN Ct:vh