

**SESSIONS DIVISION, KOLLAM**  
IN THE PRINCIPAL SESSIONS COURT  
Present: Sri. N. V. Raju, Prl. Sessions Judge, Kollam  
Monday the 27<sup>th</sup> day of October, 2025/05<sup>th</sup> Karthikam, 1947

**SESSIONS CASE NO. 1020/2023**  
**(Crime No. 852/2019 of Kottarakkara Police Station)**

Complainant : The Inspector of Police, Kottarakkara Police Station  
through the Public Prosecutor, Kollam.  
By Adv. Vilayil A. Rajiv, Public Prosecutor

Accused : Shiji Raj, S/o. Somarajan, House No. 21,  
Laksham Veedu, Dhavan Nagar, Gandhimukku,  
Kottarakkara, Kollam.  
By Adv. Praveen Kumar. G (LADC)

Charge : Offence punishable under sections 20(b) (ii) (B) of  
NDPS Act.

Plea of the accused : Not Guilty

Finding and sentence of the court : The accused is found not guilty of the offence  
punishable under Section 20 (b) (ii) (B) of the  
Narcotic Drugs and Psychotropic Substances  
Act 1985, and he is acquitted under Section 235  
(1) of Cr.P.C.

Date of trial and hearing : 26.08.2025, 13.10.2025, 14.10.2025, 15.10.2025,  
18.10.2025, 21.10.2025, 22.10.2025.

This sessions case having been finally heard on 26.08.2025 and the  
Court on 27.10.2025 delivered the following:

## **JUDGMENT**

This case arises out of Crime No. 852/2019 of Kottarakkara Police Station. The accused stands indicted for the offence punishable under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is as follows: While CW7-K.K. Baiju, the Inspector of Police, Kottarakkara Police Station, was conducting patrol on 31.03.2019 at 4 p.m., on getting confidential information, he proceeded to the Railway Station at Kottarakkara. The accused was seen in the railway station premises at 17.50 with a pickup bag in his hand. On seeing the police party, the accused attempted to run away. But the police party had restrained him. The bag contained two packets of ganja. CW7 had arrested the accused at 6.15 p.m. 3.230 kilograms of ganja were found in the bag of the accused.

3. On completion of the investigation, the Inspector of Police, Kottarakkara, had filed a final report.

4. On submission of the final report before the court, the same was taken on file. The court took cognizance of the case and issued process against the accused.

5. The accused had appeared before the court. A Legal Aid Counsel was provided to the accused. Section 207 of Cr.P.C. was complied with.

6. After hearing the prosecution and the accused and upon perusal of the records, a charge was framed against the accused in terms of the case of the prosecution.

7. The charge was read over and explained to the accused. The accused pleaded not guilty. Thereafter, the prosecution examined PW1 to PW6 and marked Exts. P1 to P15 and MO1. CW1 and CW7 are reported to be no more.

8. On completion of the evidence of the prosecution, the accused was questioned under Section 313 of the Cr.P.C. The accused denied the incriminating evidence, and he pleaded that he was innocent.

9. Both sides were heard under Section 232 of Cr.P.C. There were no grounds for acquittal under Section 232 of Cr.P.C. Hence, the accused was directed to enter his defense evidence. However, the accused did not adduce any evidence.

10. Heard both sides.

11. The following points arise for consideration and decision in this case:

(1) Did the accused possess 3.230 kilograms of ganja on 31.03.2019 as alleged by the prosecution?

(2) What is the proper sentence, if any, or order?

12. **Point No. 1:** PW1 was working as a porter in the Kottarakkara Railway Station. He said that the Sub Inspector of Police, Kottarakkara, and team had come there. However, he did not see the police restraining the accused. He did not support the prosecution, and the learned Public Prosecutor had confronted him with Exts. P2 to P4, previous statements of PW1.

13. PW2 was examined to prove that the Police had used an electronic weighing machine to weigh the ganja. He denied that he had delivered his weighing machine to the police. This witness was also declared hostile to the prosecution, and the learned Public Prosecutor had confronted him with his previous statements.

14. PW3 was the Tahsildar of Kottarkkara. He said that, on 31.03.2019, he had received a request from the Sub Inspector of Police, Kottarakkara to witness the search of one person allegedly detained with ganja. He said that on reaching the Railway Station, he had found the police with the

accused. He identified the accused. He claimed that he himself had made a search of the body of the accused after introducing himself. Currency notes of ₹20/- and ₹10 were found in the possession of the accused. The accused was holding a shopping bag. He opened the same, and ganja was found in packets in the said shopping bag. The ganja was weighed on a weighing machine brought from a nearby shop. Ganja had a weight of 3.230 Kilograms. Ext. P5 is the notice that the police had given to him. He identified the MO1 shopping bag as the one in which ganja was found. PW3 asserted that it was he who had opened the packets containing ganja. But, during cross-examination, he said that while he reached the Railway station, the shopping bag in which the ganja was found was seen in the bonnet of the police vehicle. This contradicts the case of the police.

15. PW4 was a Senior Civil Police Officer who accompanied CW7. He said that the accused was seen carrying the shopping bag at the Railway Station at Kottarakkara. The Sub Inspector had told the accused that he had received information that the accused was possessing ganja, and he had to be searched. He further informed the accused that he was entitled to have the presence of a Gazetted Officer. The accused insisted on the presence of a Gazetted Officer. Then, PW3 was summoned. PW4 said that the two packets in the shopping bag held by the accused were opened in the presence of PW3. He also said that 3.230 Kilograms of ganja were found in the said packets. He further said that CW7 had prepared Ext. P3 Mahazar and he had attested the same. During cross-examination, he said that the ganja in each packet was not separately weighed. The ganja in both packets was mixed and weighed together.

16. PW5 was another Civil Police Officer, who claimed that he had accompanied CW7. The accused was found standing near the Railway Station, holding a shopping bag. He had delivered notice to PW3. He said that the ganja was examined after PW3 had come. PW6 is CW8. He was the

Inspector of Police. CW8 had taken over the investigation of the case from CW7 on 01.04.2019. He had produced the accused before the court. He had recorded the statements of the witnesses. He had submitted Ext.P6 forwarding note. Ext.P7 is the report of chemical analysis, which certifies that the sample examined was ganja. Ext.P8 and Ext.P9 are records given by CW7 under sections 41 and 42 of the NDPS Act. He said that CW7- Baiju worked along with him, and he is conversant with the signature of Baiju. Ext. P3 Seizure mahazar is signed by CW7 Baiju. CW7 had registered Ext.P10 First Information Report. Ext.P11 to P14 are the arrest memo, Inspection memo, custody memo etc prepared by CW7.

17. PW6 had produced the contraband in court as per Ext.P8 property list. He had recorded the statements of witnesses. While the case of the prosecution as stated in the final report and Ext. P3 Seizure mahazar states that CW7 conducted the search. PW3 claims that he opened the packets in the MO1 shopping bag and weighed them. Moreover, while PW3 came to the spot, the said packets with MO1 bag were placed on the bonnet of the police vehicle. He had not seen the accused carrying or possessing the ganja. There is no proper evidence that a sample was taken. Ext.P7 report will not help the prosecution. There is no evidence of drawing the sample by CW7. Even if such evidence were there, it would not help the prosecution since there was no compliance of Section 52A of the NDPS Act. Moreover, the contraband is not marked in this case. The inventory and search under section 52A of the NDPS Act is supposed to be in lieu of the contraband. Under this provision, the officer in charge of the police station, to whom the contraband seized under the Act is forwarded, is bound to prepare an inventory of such narcotic drugs or substance etc. and make an application to the Magistrate requesting him to certify the correctness of the inventory so prepared and also seek permission to take photographs of the substance and to draw representative samples of such substance. Where an application for the said purpose is made, the Magistrate

shall allow the said application. Section 52 A (4) of the Narcotic Drugs and Psychotropic Substances Act states that notwithstanding anything contained in the Indian Evidence Act 1872 or the Code of Criminal Procedure, every court trying an offence under this Act, shall treat the inventory, the photographs of the narcotic drugs etc. and any list of samples drawn under Sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

18. In *Union of India v. Mohanlal* (2016 (3) SCC 379), the Hon'ble Supreme Court considered the impact of the said Section. The Hon'ble Apex Court observed that as soon as the seizure is effected and the contraband is forwarded to the officer in charge of the administration or the empowered officer, the said officer is bound to comply with the provisions aforementioned. It was further observed that the question of drawing of samples at the time of seizure in the absence of a Magistrate does not arise in the light of the scheme of things under Section 52A of the Narcotic Drugs and Psychotropic Substances Act. It was further observed that there was no provision in the Act that mandated the taking of samples at the time of seizure.

19. The above proposition of law was followed in *Bothilal v. Intelligence Officer* (2023 SCC Online SC 498; 2023 KHC 6460) and *Simarnjit v. State of Punjab* (2023 SCC Online 906:2023 KHC 6642). In *Bothilal v. Intelligence Officer* (2023 SCC Online SC 498;2023 KHC 6460 ) after referring to *Union of India v. Mohanlal* (2016 (3) SCC 379), it was observed that the act of drawing samples from all the packets at the time of seizure is not in conformity with what is held in the case of *Mohanlal*, 2016 (3) SCC 379 and it created a serious doubt about the prosecution's case that the substance recovered was contraband. A similar observation was made in *Simarnjit v. State of Punjab* (2023 SCC Online 906: 2023 KHC 6642).

20. In *Yusuf @ Asif v. State* (2023 SCC Online SC 1328: AIR 2023 SC 5041: 2023 KHC 7154), the accused was convicted for the offence of possessing 20 kg of heroin. In that case, the Hon'ble Apex Court after referring

to *Union of India v. Mohanlal* reiterated that in the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial; once there is no primary evidence available, the trial as a whole stands vitiated.

21. All the above said authorities have been followed in *Manoj v. State of Kerala (2024 (2) KHC 233; 2024 (2) KLT 493)*. It was also observed that the intention of the legislature by incorporating Section 52 A of the Narcotic Drugs and Psychotropic Substances Act is to see that the process of drawing of sample has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

22. *Mohanlal's* case (cited supra) has been further followed in *Mangilal v. State of Madhya Pradesh (2023 SCC Online SC 862: 2023 KHC 6728)*. *Manoj v. State of Kerala* (Supra) involved a case of possession of 1.3 kilograms of dry ganja. The Hon'ble High Court referred to the observation in *Mangilal v. State of Madhya Pradesh* that failure to follow the procedure under Section 52A of the Narcotic Drugs and Psychotropic Substances Act creates a serious doubt with respect to the seizure.

23. The above authorities equally apply to this case also. Since Section 52A of the Narcotic Drugs and Psychotropic Substances Act has not been complied with and no sample having been collected in the presence of Magistrate as required under Section 52 A of the Narcotic Drugs and Psychotropic Substances Act, no reliance can be placed on Ext. P7 report. The result is that the prosecution has failed to prove beyond reasonable doubt that the substance allegedly seized from the possession of the accused was Ganja prohibited under the Narcotic Drugs and Psychotropic Substances Act 1985. The contraband has not been proved or identified. There is no evidence of

a sample having been taken in this case. Under the said circumstances, the prosecution has failed to prove that the accused had possessed 3.230 kilograms of ganja on 31.03.2019. The accused is entitled to the benefit of reasonable doubt. The prosecution has miserably failed beyond reasonable doubt to establish that the accused had possessed Ganja, and the same was recovered from the possession of the accused. Hence, the prosecution has failed to prove the guilt of the accused. The point is answered accordingly.

24. **Point No.2:** In the light of findings on point No.1, there is no occasion for considering the question of sentence. The accused is entitled to be acquitted. The point is answered accordingly.

As a result, the accused is found not guilty of the offence punishable under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act 1985, and he is acquitted under Section 235 (1) of Cr.P.C. His bail bond stands discharged.

MO1 shall be confiscated after the expiry of the appeal period.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on this the 27<sup>th</sup> day of October, 2025.)*

Sd/-  
N. V. Raju  
Sessions Judge

//True Copy//

Sheristadar

Appendix:Witness for the prosecution

- PW1 : Dileep  
PW2 : Manoharan Pillai  
PW3 : M.K. Anil Kumar  
PW4 : Aju D. Thomas  
PW5 : Siju  
PW6 : Nuoman

Witness for defence : Nil

Exhibits for the prosecution

- P1 : Portion of 161 statement Proved by PW1.  
P2 : Portion of 161 statement Proved by PW1.  
P3 : Seizure Mahazar dtd 31.03.2019 Proved by PW1.  
P4 : Portion of 161 statement Proved by PW1.  
P5 : Notice dtd 31.03.2019 proved by PW3.  
P6 : Forwarding note dtd 24.04.2019 proved by PW6.  
P7 : FSL report dtd 08.05.2020 proved by PW6.  
P8 : 42(1) Notice dtd 31.03.2019 proved by PW6.  
P9 : Sec 57 Notice dtd 01.04.2019 proved by PW6.  
P10 : FIR dtd 31.03.2019 proved by PW6

- P11 : Arrest Memo dtd 31.03.2019 proved by PW6  
P12 : Inspection Memo dtd 31.03.2019 proved by PW6  
P13 : Custody Memo dtd 31.03.2019 proved by PW6  
P14 : Address Report dtd 01.04.2019 proved by PW6  
P15 : Property List dtd 01.04.2019 proved by PW6

Exhibits for defence : NIL

Court Exhibits : NIL

Material Objects :

MO1 : Big Shopper

Sd/-  
Sessions Judge

Typed by : Vineetha. R  
Compared by : Geetha Govind

TABULAR FORM AS PER RULE 132 OF CRIMINAL RULES OF PRACTICE

1. Serial No. : SC. 1020/2023
2. Name of police station : 852/2019 of Kottarakkara Police Station  
& Crime No.

Description of the accused : Shiji Raj, S/o. Somarajan, House No. 21,  
Laksham Veedu, Dhavan Nagar, Gandhinukku,  
Kottarakkara, Kollam.

Dates of

4. Occurrence : 31.03.2019
5. Complaint :
6. Apprehension : 31.03.2019, 23.01.2020, 04.08.2023,  
05.07.2025
7. Released on bail : 14.06.2019, 14.02.2020, 22.03.2024,  
22.10.2025.
8. Commitment : Nil
9. Commencement of trial 26.08.2025
10. Close of trail 22.10.2025
11. Sentence or order 27.10.2025
12. Service copy of judgment 27.10.2025
13. Cause of delay : No delay

Sd/-  
Sessions Judge

//True Copy//

Sheristadar

Typed by : Vineetha. R  
Compared by : Geetha Govind