

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. A. NO.952/2005

% Date of Decision : 7th March, 2008.

GURDEV SINGH Appellant.

Through Mr.Naveen Gaur & Mr.Sudhir Kumar, Advocates.

VERSUS

STATE NCT OF DELHI Respondents.

Through Ms. Nandani Sahni & Mr. Ujjwal Kumar, Advocates.

%07.03.2008

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported
in the Digest ?

SANJIV KHANNA, J:

1. The present appeal is directed against the judgment dated 1st October, 2005 and the order of sentence dated 5th October, 2005 passed by the Additional Sessions Judge convicting the appellant Gurdev Singh under Section 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'Act'). By the order of sentence, the appellant has been directed to undergo rigorous imprisonment for a period of ten years and pay fine of Rs.2 lacs and in default thereof undergo simple imprisonment for two years.
2. Learned Trial Court in the impugned judgment has held that the appellant, on 16th August, 2002, at about 7.50 P.M. was found to be in unlawful possession of 2 kgs of charas, at Prem Pyao, towards Kanjhawala side, Delhi within the jurisdiction of P.S. Kanjhawala. He was apprehended while coming on motorcycle bearing No. DL7SN-6169 by SI S.A.Farooqui, Inspector Rajinder Prasad and others who had prior information from a secret informer that a Sikh person aged about 45-50 years would be coming from the side of Village Dabas via Prem Pyao with Charas. Learned Trial Judge on the basis of the

statements made by the prosecution witnesses and the reasoning given in the judgment has held that the prosecution case has been proved beyond doubt.

3. Learned counsel for the appellant has mainly urged four grounds.

Firstly, CFSL form was not sent to the CFSL laboratory and there is a strong possibility that the samples were tampered. Secondly, there was violation of Section 50 of the Act as the accused was not informed of his right to be searched before a Gazetted Officer or a Magistrate. Mere option is not sufficient compliance. Thirdly, it was submitted that some of the witnesses were not examined by the prosecution. Lastly, it was pointed out that the public witness, Mr.Vinod had not supported the prosecution version and, therefore, the accused should be given benefit of doubt and conviction solely on the basis of statements made by police officers cannot be sustained.

4. Public witness, Mr.Vinod did not support the prosecution version. He appeared as PW-2 and in his examination in chief had stated that he had been called by the police at Kanjhawala and made to sign some blank papers and nothing was recovered from the accused Gurdev Singh in his presence. He was declared hostile and was allowed to be cross examined by the Additional Public Prosecutor. His statement including cross examination does not support the prosecution version.

However, this itself does not entitle the appellant to be acquitted.

Statements of the police officers and their cross examinations have to be carefully scrutinized by the Court to decide whether the prosecution has been able to prove its case beyond doubt. Evidence of the police officers is not un-reliable and doubtful because the public witness has not supported the case of the prosecution. Evidence of police officers is not to be dis-believed on this ground. Evidence of Police officers is admissible. In such circumstances the court is to examine evidenciary value and weight that can be given to statements made. Greater care and scrutiny is required to ensure whether the accused was falsely implicated, whether police officers were hostile or inimical to the accused and whether their evidence was shaken in cross examination. Corroboration is a rule of prudence but admissible evidence is not wiped off because of lack of corroboration. This proposition of law has been accepted by the Supreme Court in the case of **State of Gujarat versus Anirudhsing** reported in (1997) 6 SCC 291. The said proposition has been reiterated again in the case of **Girja Prasad versus State of M.P.,** reported in (2007) 7 SCC 625,(at page 632) wherein it has been held asunder :

25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and

trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence *may* require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

5. The Supreme Court expressed the same opinion in the case of ***Kalp Nath Rai versus State***, reported in (1997) 8 SCC 732 in which it was elucidated as under :-

“88. There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined. In *Pradeep Narayan Madgaonkar* to which one of us (Mukherjee, J.) was a party, the aforesaid position has been stated in unambiguous terms, the relevant portion of which is extracted below: (SCC p. 261, para 11)

“Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that

their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in

material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony.”

89. In *Balbir Singh v. State* this Court has repelled a similar contention based on non-examination of independent witnesses. The same legal position has been reiterated by this Court time and again vide *Paras Ram v. State of Haryana*, *Sama Alana Abdulla v. State of Gujarat*, *Anil v. State of Maharashtra*, *Tahir v. State (Delhi)*.”

6. Prosecution has led evidence of Head Constable Naresh Kumar who appeared as PW-3, Inspector Rajinder Prasad PW-4, SI S.A. Farooqui PW-5, ACP Ishwar Singh PW-7, Constable Davinder PW-9 and SI Rajinder Kumar PW-10. The said witnesses were present when the appellant-accused was arrested with charas. The said Officers have stated that on 16th August, 2002 the appellant, Mr. Gurdev Singh was intercepted near Prem Pao about 7.50 p.m, when he was coming on motorcycle and on the search, he was found to be carrying 2 kgs of charas. The statements made by the said Officers are reliable, trustworthy and have not been dented in their cross examinations. Learned counsel for the accused was not able to point out any substantial or major contradiction in their statements. All of them have stated on oath that pursuant to secret information, a raiding party was formed and Nakabandi was made. As per the secret information, a Sikh person was to come on a motorcycle from Sultanpuri road carrying charas. They have further stated that at about 7.50 p.m., Mr. Gurdev Singh came on a motorcycle and was

stopped and thereafter overpowered. In the meantime, ACP, Ishwar Singh (PW-7) also reached the spot. Notice under Section 50 was given to the accused and charas was found in three pullandas, one was of big size and two others of small sizes. The weight of the single big bag was 1 kg and the two small bags were 500 gms each. Three samples of 100 gms were prepared on the spot and marked as S1, S2 and S3 and were sealed with the seal of SAF and RPA. They have also stated that CFSL form was filled on the spot and both seals were affixed thereon. Motorcycle of the accused was taken into possession and personal search of the accused was also done. The original pullandas were produced before the witnesses, who identified the seal of SAF and RPA which were found to be intact. The said pullandas were marked as Ex.PW-1, Ex.PW-2 and Ex.PW-3. Some witnesses also identified the motorcycle of the accused. The quantity recovered in the present case is substantial, 2 kgs of charas.

7. The contention of the learned counsel for the appellant that Constable Ramdhari, driver of ACP and wireless operator of ACP were not examined and therefore, the prosecution version should be disbelieved, cannot be accepted. The prosecution has examined as many as 6 witnesses who were present at the time of search on 16th August, 2002, when the accused was apprehended carrying charas. It cannot be said that their statements do not

hold and should be disbelieved because prosecution could have produced other witnesses also to support their case. Multiplication of witnesses is not required, specially when substantial number of eye witnesses were examined and have been able to prove the case of the prosecution. Reliance in this regard can be placed on **Chaudhari Ramjibhai Narasangbhai versus State of Gujarat** reported in (2004) 1 SCC 184 and **Jai Prakash versus State (Delhi Administration)** reported in (1991) 2 SCC 32.

8. Learned counsel for the accused relied upon Ex.PW1/A Malkhana register and the entries made on 28th October, 2002. There are two entries of the said date. The first entry states that three samples had been handed over to Mr.Girdhari for being sent to FSL Malviya Nagar, Delhi. The second entry also of the same date states that three CFSL samples had been handed over to PW-6, Constable Rakesh for being deposited with FSL, Malviya Nagar. Both entries have been made by PW1, Head Constable Radha Kishan and bear his signature.

9. I have examined the statement of PW-1, Radha Kishan. He has stated that three samples along with CFSL form were given to Constable Rakesh

to be deposited with FSL, Malviya Nagar. He was not cross examined and asked why there were two entries both dated 28th October, 2002. The only question put to Constable Radha Kishan in the cross examination was that entry dated 28th October, 2002 does not mention that CFSL form was also sent to FSL, Malviya Nagar through Constable Rakesh Kumar. Learned counsel for the appellant had also drawn my attention to Ex.PW1/B. The transport receipt mentions that three samples with seals SAF & RPA were sent through Constable Rakesh Kumar. It was pointed out that the documents signed by Constable Radha Kishan also does not mention that CFSL form was also sent along with samples. Constable Rakesh Kumar was examined as PW-6. He admitted that three samples and CFSL from were given to him to be deposited with FSL, Malviya Nagar. The said witness was not cross examined on the aspect that the samples were infact not given to him for being deposited in FSL or were given to Mr. Girdhari. Thus, Radha Kishan PW1, incharge of Malkhana who had made entries in Malkhana register and Constable Rakesh Kumar PW-6 was not cross examined and questioned on the three samples given to PW-6 for being deposited with FSL, Malviya Nagar. To that extent, their testimonies remain completely unchallenged. Both witnesses had

also stated that CFSL form was sent along with samples. It is correct that both the Malkhana register and the transport receipt (Ex.PW1/A and PW1/B) do not mention about CFSL form. However, this fact alone, I do not think dents the prosecution version so as to create a doubt in the mind of the Court that there was tempering. Mention of CFSL form may have been missed.

10. In this regard, I may refer to the CFSL report dated 29th November, 2002. The said report specifically states as under:-

“The Parcel(s) **three** in number marked '**S1**', '**S2**' & '**S3**' which were sealed and tallied with specimen seal impression forwarded.”

Thus, CFSL report is clear that the seals on three samples i.e. S1, S2 and S3 were tallied with the specimen seal impression forwarded to the said laboratory. The CFSL form contained the specimen seal impression. The accused never moved an application for cross examination of the Senior Scientific Officer, Forensic Science Laboratory under Section 293 Cr.P.C. Therefore, the contention of the appellant that the CFSL form was not forwarded to the laboratory and the entire prosecution version should be disbelieved on this ground cannot be accepted. I may also refer here to two judgments of this Court in ***Shamim Versus State of Delhi*** (Crl. Appeal No.161/2000) decided on 19th October, 2006 and ***Navin Kumar Versus State*** reported in 1999 (1)

SCC (Delhi) 62. In the case of ***Shamim*** (supra), it was observed that when CFSL report states that the seals were intact and tallied with the specimen seals, it would indicate that the laboratory in question had received the CFSL form. In the case of ***Navin Kumar*** (supra), it was again observed that when CFSL report states that parcel seal samples tallied with the specimen seals and were intact, it would show that there was no tampering with the samples, unless there was some other evidence to the contrary. Judgment in the case of ***Safiullah Versus State (Delhi Administration)*** reported in 1993 (1) C.C. cases 497 (HC) of this Court relied upon by the learned counsel for the appellant is distinguishable. In the said case, the ASI who had appeared at PW-2 did not state anything about filling up of CFSL form and Moharrar Malkhana also did not state that the articles were sent to the chemical examiner along with CFSL form. In these circumstances, the Court gave benefit of doubt to the accused therein, as even the seals were also not handed over to any independent witness. Another decision of this Court in ***Pradeep Kumar versus State*** reported in 1990 (1) C.CrI.Cases 69 (HC) is also distinguishable because in the said case the SHO had not supervised sealing of the parcels and seals were not given to any independent witness.

11. Learned counsel for the accused submitted that there was difference in quantity of the three samples at the time when they were prepared and as per

report of FSL. It is stated that three samples were of 100 gms each, whereas as per the report of FSL, three samples were found to be of 105 gms (sample S1), 96.7 gms (sample S2) and 96.26 gms (sample S3). It has come on record that when the samples were prepared, they were weighed on a manual scale (see, cross examination of PW3 Constable Naresh Kumar and statement of PW7, ACP Ishwar Singh). Electronic scales normally used by Forensic Science Laboratories are far more sophisticated and precise. The difference in weight is not substantial to accept the contention of the learned counsel for the appellant. Another contention raised by the appellant was that the seals were not handed over to the private witness. In the present case, three original packets Ex.P1, P2 and P3 and the three samples were sealed by seals of SAF and RPA. This has been stated by PW-3 Head Constable Naresh Kumar, PW-4 Inspector Rajinder Prasad, PW-5 SA Farooqui PW7 Ishwar Singh and Constable Davinder PW-9. The seal of SAF belongs to SI S.A.Farooqui and the seal RPA belongs to Inspector Rajinder Prasad. PW-7 Ishwar Singh, ACP Crime Branch was also present on the spot when the sealing was done. Mere fact that the seals were not given to the public witness, does not in the facts of the present case and in view of the categorical statements of these witnesses, justify any doubt. The Officers have to use the seals for several purposes. Even if seal is given to a public witness, it is normally returned back shortly. Statement of PW-1 Radha Kishan

does not create any doubt or suspicion that the samples or the pullandas were tampered with. Quantity recovered is substantial. Case of implant or false implication has not been made out on the basis of evidence on record.

Reference can be made to the observations of the Supreme Court in ***Kalpanath Rai's*** case (supra) quoted above.

12. The last contention which requires consideration is on the aspect of Section 50 of the Act. In the notice under Section 50 of the Act, it was mentioned that Mr.Gurdev Singh s/o Sh. Harnam Singh R/o A-86, Wazipur, Industrial Area, Delhi was put to notice and informed that the police officers had information that he had Charas, which was punishable under the Act. He was further informed by the said notice that if he wanted he could be taken before a Gazetted Officer or a Magistrate for his personal search and as per his wishes either of them could be called at the spot. The accused has made an endorsement on the said notice in his own handwriting that he did not want his personal search before anyone. The personal search memo Ex.PW4/A is witnessed by Inspector Rakesh Kumar (PW3) and ACP Ishwar Singh (PW7) in addition to Mr.Vinod

(PW2) who as already stated above has not supported the prosecution version. The short question is whether the notice satisfies requirements of Section 50 of the Act. In ***State of Punjab Versus Balbir Singh*** reported in 1994 CrI.L.J. 302, it was held that Section 50 of the Act is mandatory and important valuable safeguard. It was held that failure of the empowered officer to inform the suspect that if he so requires, he could be produced before a Gazetted Officer or a Magistrate would amount to non-compliance of Section 50. Thereafter, the Supreme Court in ***State of Punjab Versus Baldev Singh*** reported in (1999) (6) SCC 172 again examined Section 50 of the Act and held that it is the obligation and duty of the empowered officers before conducting search of the suspect on the basis of prior information to inform the suspect, that he has right to have his search conducted in the presence of a Gazetted Officer or a Magistrate. Failure to inform the suspect of his right, rather than mere choice, would render the search illegal and would amount to violation of Section 50 of the Act. The question whether Section 50 is mandatory or not, was answered by holding that it was imperative obligation and duty of the empowered Officer to ensure that the suspect was informed about existence of his right to be searched before a Gazetted Officer or a Magistrate. Though failure to inform an accused about his right might not vitiate the trial as such, but because of inherent prejudice that would be caused to an accused it would render the conviction and sentence

unsustainable. It was further held that when the prosecution disregards Section 50 of the Act, it does so at its peril. I may also note here the relevant portions of the conclusion given by the Supreme Court which are as follows:-

“(3) That a search made, by an empowered officer, on prior information, without informing the person of his right that, if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under cloud if the Court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair;

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut-short a criminal trial;

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but, hold that failure to inform the concerned person of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law;

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search;

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.”

13. The said judgment has been considered in ***Prabha Shankar Dubey***

Versus State of M.P. reported in 2004 (2) SCC 56. In the said case,

reference was made to several other decisions. It was noticed that no

prescribed form is required or mentioned in Section 50 and what is intended is that the suspect should be aware of existence of his right. In each case on examination of facts it has to be decided whether requirements of Section 50 have been satisfied. Supreme Court recently in ***Vijaysinh Chandubha Jadeja Versus State of Gujarat*** reported in (2007) 1 SCC 433 has referred the issue of exact purport of Section 50 to a larger Bench on the question whether it is the duty of the Enforcing Officer to inform the suspect about his right to be searched before a gazetted officer or a magistrate or the conditions of the Section are satisfied when an offer is given to the suspect. However, in para 8, it was observed that even in ***Baldev Singh's*** (supra) case, the Constitutional Bench had observed that it was not necessary that the accused should be informed about his right in writing. Search memo or contemporaneous document need not specifically mention that the suspect was informed of his right. Oral evidence of the officer who conducted the search is sufficient. Thus it depends upon the oral evidence of the Officer who conducts the search. In the present case, notice under Section 50 of the Act has been given in Hindi and the extract of words used are as follows:-

“Aap chahe toh aap apni talashi kisi rajpatrit adhikari (Gazetted Officer) ya Magistrate ke samne karva sakte hai jinko aapki ichcha anusar yaha mauka par bulwaya ja sakta hai.”

14. It is somewhat difficult to exactly translate the said words into English and decipher whether the accused was informed of his right or only an offer was made. SI SA Farooqui (PW-5), the empowered officer, who had given the said notice has stated that the accused was told that he could be produced before a Gazetted Officer or a Magistrate but the accused refused and declined the said offer. In his cross examination, SI S.A. Farooqui has specifically stated as under:-

“It is incorrect to state that accused was not informed about his right of

search before Gazetted Officer or Magistrate.

Vol. It is however, correct that there is no mention in the document.”

15. I may also note that PW-7 Ishwar Singh has stated that he was present when notice under Section 50 of the Act, Exh. PW5/B was issued. PW-7 Ishwar Singh is a Gazetted Officer. In his statement on oath PW-7 Ishwar Singh has stated that he had also informed the accused that he is ACP and a Gazetted Officer. Mr. Ishwar Singh was not the authorized/empowered officer who had conducted the search. Thus appellant was searched before a gazetted officer. SI S.A. Farooqui (PW-5) was the empowered officer who had conducted the search. In ***Ahmed Versus State of Gujarat***, reported in (2000) 7 SCC 477, it was held that even if an empowered officer is a gazetted officer, Section 50 of the Act should be complied with. Empowered officer cannot act in a dual capacity as an empowered officer and as a gazetted officer also. Mere fact that the empowered officer is a gazetted officer is not sufficient compliance of Section 50 of the Act.

16. The present case is covered by the decision of the Supreme Court in the case of ***State of Rajasthan versus Ram Chandra*** reported in (2005) 5 SCC 151, where it was observed :

18. If the person so requires, the officer referred to under sub-section (1) of Section 50 may detain the person to bring him before the gazetted officer or the Magistrate, as the case may be. As was noticed in

Raghubir Singh case the Act affords the person to be searched a safeguard to the effect that he may require the search to be conducted in the presence of a senior officer. The senior officer may be a gazetted officer or a Magistrate depending upon who is conveniently available. That being the purpose of the Act, if any gazetted officer even if he is a police officer of a particular rank is present nearby when the accused is detained, the accused may be asked as to whether he would like to be searched in the presence of that officer or a Magistrate. The foundation of the stand taken by the accused-respondent which found favour with the High Court is that if he is a member of the raiding party the requirements of Section 50 are not met. This is not legally tenable, and in any event on the facts of the present case it was not so because PW 3, the Deputy Superintendent of Police reached the spot after the person was detained.

21. The conclusions of the High Court would have been correct if the officer proposing to effect the search is a gazetted officer and he gives option to be given under Section 50 to the person detained to be searched in his presence. In that event, the requirement of Section 50 would not be met because the officer proposing to effect the search cannot act in dual capacity; first as an officer authorised under Section 42 to search a person and second as the gazetted officer in whose presence the accused may opt to be searched.

22. The object of the Act being that the search is conducted in the presence of a superior officer, in order to lend transparency and authenticity to the search, it cannot be held as a principle in law that if a superior officer happens to be with the officer authorised (which the High Court has described as being a member of the raiding party) the position would be different. The High Court proceeds on the basis that there may be bias on the part of the officer

because he was accompanying the officer authorised. Such a presumption is not legally available.

23. The High Court was, therefore, not correct in holding that the search in the presence of PW 3 was not in compliance with the requirements of Section 50. Stress is on the search being conducted in the presence of any of the enumerated categories of officers. In *S. Jeevanantham v. State* it was contended by the accused that investigation having been conducted by the complainant police officer, the conviction in terms of Section 8(c) read with Section 20(b)(ii) of the Act was vitiated. The plea was repelled relying on the decision of this Court in *State v. V. Jayapaul*. It was observed that nothing was pointed out to show that the investigation had caused prejudice or was biased against the accused. In the instant case, the accused was informed of his rights and options to be exercised. He consented to be searched in the presence of PW 3. Therefore, it was not open to him even to urge non-compliance with Section 50.”

17. The said opinion is given further credence by the observations of the

Supreme Court in an earlier decision in the case of **T.T Haneefa versus**

State of Kerala reported in (2004) 5 SCC 128. In the said case the Supreme

Court expressed it's opinion in following words:

“7. If the accused says that search shall be in the presence of a gazetted officer or a Magistrate, the officer can choose any one of them depending upon the availability of gazetted officer or the Magistrate. In this case the appellant was given an option to be searched in the presence of the Magistrate, he did not exercise that right. The counsel for the appellant drew our attention to the decision of this Court in *Beckodan Abdul Rahiman v. State of Kerala* wherein this Court held that there was violation of Article 50 of the NDPS Act. It is pertinent to note that the nature of option given to the accused by the searching officer and the facts show

that in that case the inquiry was made by the searching officer as to whether the accused would like to meet any higher officer or a gazetted officer and the accused replied in the negative. These words used by the searching officer were certainly not in compliance with Section 50 of the NDPS Act. It was in that background this Court set aside the conviction on the ground that there was violation of Section 50 of the NDPS Act. In the instant case, we do not think there is any violation of Section 50 of the NDPS Act, as the accused was given the right to be searched in the presence of a Magistrate and as he failed to opt for that, we do not think that there was any procedural illegality.”

Reference can also be made to ***Vijaysinh Chandubha*** case (supra).

18. In these circumstances, I reject the arguments of the appellant that there was violation of Section 50 of the Act in the present case.

19. In view of the above, I do not find any merit in the present appeal and the same is dismissed.

(SANJIV KHANNA)

JUDGE

MARCH 7, 2008.

RN/P

