

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM A 1230-MA of 2015

Date of Decision: December 14, 2015

State of Haryana		Applicant
	Versus	
Gangu		 Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Praveen Bhadu, Asst. A.G. Haryana
for the applicant.

T.P.S.MANN, J.

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 21.1.2015 passed by learned Special Judge, Ambala, whereby, the respondent stands acquitted of the charge under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act').

In brief, the prosecution case is that on 27.3.2011, SI Naresh Kumar of Detective Staff, Ambala received secret information that respondent who was wearing cream coloured pant and shirt was bringing smack from Uttar Pradesh and will proceed from Bus Stand Ambala Cantt. to his house and in case Naka was laid near Dhaba of Puran Singh, he could be apprehended. SI-Naresh Kumar informed Sh. Devinder Yadav, Additional Superintendent of Police, on his mobile and also prepared notice under Section 42 of the Act. He asked the

passersby to join in the Nakabandi but they expressed their helplessness. Even the owners of Dhaba showed their inability. At about 1.00 p.m., the respondent was seen coming from the side of Bus Stand Ambala Cantt. on foot. He was stopped and on enquiry he disclosed his name and parentage. He was served with notice under Section 50 of the Act that he was suspected to be carrying some narcotic substance and he had a legal right to get him searched either in the presence of a Magistrate or a Gazetted Police Officer. The respondent consented for his search in the presence of Gazetted Police Officer. The Additional Superintendent of Police, Devinder Yadav along with his staff reached the spot. SI Naresh produced the respondent before him. As per the instructions of the Additional Superintendent of Police, personal search of the respondent was conducted by SI Naresh Kumar which led to recovery of 160 grams of smack from the left pocket of his pant. Out of the contraband, two samples, weighing 10 grams each were separated and converted into a parcel. The parcels were duly sealed. Sample seals were prepared. The parcels and the residue were taken into possession. SI Naresh Kumar handed over his seal to ASI Balkar Singh whereas the Additional Superintendent of Police retained his seal with him. As the respondent did not have any licence or permit to carry the contraband, he was found to have committed an offence

punishable under Sections 21, 27, 28 and 29 of the Act. Upon completion of investigation, the respondent was charged for the offence under Section 21 of the Act, to which, he pleaded not guilty and claimed trial. The trial ultimately ended in the acquittal of the respondent. Hence, the present application by the State of Haryana.

Having heard learned State counsel and on going through the impugned judgment of acquittal passed by the learned trial Court as well as the trial Court record, this Court finds that the mandatory provisions of Section 50 of the Act were not fully complied with by SI Naresh Kumar while serving notice Ex.P12 upon the respondent as the respondent was given an option of search either before a Magistrate or a Gazetted Police Officer. Limiting the offer of search before a Gazetted Officer of the Police Department renders the notice under Section 50 of the Act invalid as the Gazetted Officer could be from the departments of central excise, narcotics, customs, revenue intelligence or any other department of the central government including para-military forces or armed forces as is empowered in that behalf by general or special order by the Central Government or any such officer (being an officer superior in rank to peon, sepoy or constable) of the revenue drugs control, excise, police or any other department of a State Government empowered in that behalf by the general

or special order of the State Government. SI Naresh Kumar could not limit Gazetted Officer to be from the department of Police only and limiting the option only to the Police Department renders the notice invalid.

Further, non-association of any independent witness also goes to the root of the case and the trial Court was justified in viewing with suspicion the conduct of SI Naresh Kumar in not making genuine, sincere and real offer to join such a witness. Even otherwise, the secret information pertained to the respondent bringing smack from Uttar Pradesh which would have made him liable for commission of offence under Section 21 of the Act but while sending the ruqa to the Police Station, SI Naresh Kumar had mentioned that respondent was also liable for committing offences under Sections 27, 28 and 29 of the Act.

For the aforementioned reasons, this Court is of the considered view that the respondent has been rightly acquitted of the charge against him. The application is without any merit and, accordingly, dismissed. Leave to appeal is declined.

**(T.P.S. MANN)
JUDGE**

December 14, 2015
amit rana

**(GURMIT RAM)
JUDGE**