

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.28 OF 2015

Shripad Tandel,
son of Kashinath Tandel,
Age 37 years, Indian National
Unemployed, r/o. Near Biramdevi
Devasthan, Rajwada, Vengurla,
Sindhudurg,
Maharashtra, (Presently undergoing
sentence at Central Jail, Aguada) ... Appellant

V e r s u s

STATE
Through P.P.
High Court of Bombay
at Panaji-Goa. ... Respondent

Shri Rajneesh Naik, Advocate for the Appellant.
Shri S. R. Rivankar, Public Prosecutor for the State-
Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Judgment on : 26 June 2018
Judgment Pronounced on : 4 July 2018

JUDGMENT

1. Heard Shri Rajneesh Naik, learned Advocate appearing for the appellant and Shri S. R. Rivankar, learned Public Prosecutor appearing for the State-respondent.

2. The appellant who is suffering the sentence of imprisonment consequent to his conviction under Section 8(c)

read with Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is challenging his conviction in the present appeal against the State.

3. The State-Respondent had laid a chargesheet through the Anti Narcotic Cell Police Station against the appellant on the premise that on 21.01.2013, upon information, the staff of Anti Narcotic Cell Police Station, Panaji, (for short, ANC), led by PSI Shitakant Nayak and the staff of the ANC Police Station had conducted a raid on the said evening between 19.30 hours to 22.45 hours near the Bus Stop Shed at Khendeer Junction, Morjim-Goa and caught the appellant-accused red handed who was found in illegal possession of 1.026 kgs of charas approximately worth of ₹1,55,000/- in the international market and the same was attached under the search panchanama alongwith cash of ₹130/- in different denomination, one Mobile phone make G Five and a laminated election epic card of the appellant. He had thus committed the offences punishable under Section 20(b)(ii)(C) of the NDPS Act 1985, (Act, for short hereinafter).

4. The appellant-accused challenged the conviction on the premise that the impugned judgment and order was legally perverse being contrary to law and the evidence on record.

The learned Special Judge had exercised jurisdiction not vested on him and failed to exercise jurisdiction so vested and/or acted in exercise of his jurisdiction with illegality and/or material irregularity whilst convicting the appellant for the said offences. The learned Special Judge had committed a manifest jurisdictional error in law and/or on facts in arriving at the finding that the prosecution had proved that the appellant had committed the offence on the stated date for being found in possession of 1.026 kgs of charas thereby committing the offence punishable under Section 8(C) read with Section 20(b)(ii)(c) of the Act.

5. The learned Special Judge had committed a jurisdictional error in law and/or facts in arriving at a conclusion that the independent panch witness was very much present at the time of the raid despite his evidence being riddled with discrepancies, contradictions and omissions which cast a serious doubt about his presence at the time of the raid. Moreso, there was difference in the time when he was stated to have come to the Police Station as stated in his examination in chief vis a vis the timing recorded in the Station Diary. There was discrepancy in his testimony on the direction for proceeding for the raid vis a vis the statement given by him and the I.O. PI S. Halankar (Pw.7) as a member of the raiding

party and the explanation given by the I.O. was not sufficient which cast a serious doubt on the conduct of the raid.

6. The learned Special Judge committed a manifest jurisdictional error in law and/or facts in holding that the contents of the panchanama stood proved through the panch witness Balkrishna (Pw6) when there was a serious doubt on the entries made on the green envelope exhibit 1 containing the muddemal charas. The learned Special Judge committed a manifest jurisdictional error in failing to appreciate that there was a violation of section 50 of the Act which was mandatory particularly when the substance was found on the body of the person and partial compliance was no compliance entitling the appellant to an acquittal. The impugned judgment was assailable on such and similar grounds taken in the appeal memo and therefore the appeal had to be allowed and the judgment of conviction had to be quashed and set aside.

7. Shri Rajneesh Naik, learned Counsel appearing for the appellant came to be heard on behalf of the appellant who invited my attention to the testimony of the pancha Balkrishna (Pw6) at the outset to show that there was no due compliance with the mandate of Section 50 of the Act and therefore there was every duty on the prosecution to examine the other

pancha which it had failed to do. The learned Judge had held to the contrary in the impugned judgment despite there being no compliance with Section 50 of the Act and to that extent, the finding of the learned Special Judge was incorrect. He also referred to the testimony of the pancha Balkrishna (Pw6) on the time of reporting at the Police Station as stated by him unlike the entry in the Station Diary and the finding in the impugned judgment to point out that the learned Special Judge was in error. He pointed out to various discrepancies in the testimony of the panch witness read with that of PI S. Halarnkar (Pw.7) and PSI S. Nayak (Pw8) and submitted that the appellant was entitled to a reversal of the judgment and an acquittal in his favour.

8. Shri S. R. Rivankar, learned Public Prosecutor submitted that the raid was conducted at Morjim on 21.01.2013 between 19.30 hours to 22.45 hours and that there was due compliance with the requirements of the Act in so far as the recovery of the contraband charas was concerned. The appellant-accused was given the right of being searched in the presence of a Magistrate or a Gazetted Officer and there was due compliance with the mandate of Section 50 of the Act. He raised a query whether an offer made to the accused to be searched in the presence of a Magistrate or other officer

amounted to substantial compliance of Section 50 and in that context submitted that an "other officer" took within its sweep a Gazetted Officer. He referred to the evidence of the Pancha Balkrishna (Pw.6) and submitted that PC Polekar(Pw.4) who was examined much prior to him had clearly made a reference to the offer being made to the appellant to be searched before a Magistrate or a Gazetted Officer and there was no scope for tutoring the witness having been examined prior to Balkrishna(Pw.6). He adverted to the testimony of PI S. Halarnkar (Pw.7) and that of PSI S. Nayak (Pw.8) and submitted that both of them had made due reference to the offer being made to the accused-appellant to be searched in the presence of a Magistrate or a Gazetted Officer and therefore there was no basis in the contention of Shri Rajneesh Naik, the learned Counsel for the appellant that there was a breach of Section 50 of the Act.

9. Shri S. R. Rivankar, learned Public Prosecutor further contended that there was no discrepancy in so far as the direction for going for the raid to Morjim is concerned and the minor discrepancy/omission that had occurred in the testimony of Shri Balkrishna (Pw.6) stood duly explained by PI S. Halarnkar (Pw.7). In so far as the statement of Balkrishna (Pw.6) of going to the spot in Ritz car and returning in a Swift

car was concerned, Shri Rivankar, the learned Public Prosecutor adverted to the evidence of PSI S. Nayak (Pw.8) and submitted that it was not at all a material discrepancy as to create doubt in the prosecution case and moreover as both the Officers PI S. Halarnkar (Pw.7) and PSI S. Nayak (Pw.8) had taken their respective vehicles being Ritz and the Swift car to the spot of raid and the pancha having accompanied either of them on the way and the return journey did not affect the tenor of the raid and more particularly the recovery of the contraband charas from the possession of the appellant-accused. He also tried to explain away the statement of Balkrishna(Pw.6) vis a vis the writing in red on the muddemal envelope exhibit A being recorded at the spot of the raid unlike the same having been recorded on return from the raid at the Police Station to contend that what was material was the act of the pancha to sign the envelope at the spot and this discrepancy was inconsequential and did not vitiate the raid. There was no material produced on record by the appellant to vitiate the prosecution case and therefore there was no case made out for interference with the judgment of the Trial Court. Shri Rivankar, learned Public Prosecutor placed reliance in Kumari Pun & Ors. vs. State of Goa [2017 (0) Supreme (Mah) 1276], Vijaysinh Jadeja vs. State of Gujrath [2011(1) SCC 609] and State of Punjab vs Baldev Singh [1999 (6) SCC 172]

qua the compliance with Section 50 of the Act and closed his arguments.

10. i would consider the submissions of Shri Rajneesh Naik, learned Counsel appearing for the appellant and Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State, the judgments relied upon and in the light thereof and materially the evidence on record, proceed to decide the appeal appropriately.

11. Section 50 of the Act deals with the conditions under which a search of persons shall be conducted. Sub-section (1) reads as follows :

“(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted

Officer or the Magistrate referred to in sub-section(1).

In other words, a bare reading of Section 50(1) indicates in no uncertain terms that when any Officer duly authorised is about to search any person under the provisions of Section 41, 42 or Section 43, he **shall** if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any other Departments mentioned in Section 42 or to a nearest Magistrate. In other words, the offer of search which has to be made to a person suspected to be in possession of contraband and when the search of his person is proposed to be taken, must be offered to be taken in the presence of a Gazetted Officer or a Magistrate and no other. Therefore, a plain reading of Section 50 of the Act would negate the contention of Shri Rivankar, learned Public Prosecutor, that any "Officer" would take within its sweep a Gazetted Officer as contemplated under Section 50 of the Act.

12. In Kumari Peram Pun (supra), the complainant Lady Police Sub Inspetor, had received a reliable information about six Nepali Nationals likely to come to Siolim in a taxi to deliver a narcotic substance charas to their prospective customers and thereupon she had reduced it to writing and sent a copy

thereof to the Dy.SP through a Police Constable and thereafter secured the presence of two panchas, appraised them about the information, introduced to the raiding party members, shown the seal of Anti Narcotic Cell Panaji-6 with Ashoka Emblem alongwith the kit box and had proceeded for the raid. After detaining the suspects, she had informed them i.e. the three males and three female Nepalis that she had a right to be searched in the presence of a Gazetted Officer or a Magistrate to which all of them had declined and who had also declined the search of the raiding party members and panchas as offered by her. It was contended on their behalf that there was no compliance with Section 50 of the Act as none of them were told that the search was taken for the purpose of drugs. There was also no compliance with Section 50 of the Act as the search of the female accused was not conducted before the female panchas but before the male panchas.

13. In Kumari Peram Pun (supra) in that context, a learned Single Judge of this Court on considering the factual matrix held that there was substantial compliance with the requirement of Section 50 of the Act. It was not a case like the present Appeal where the search was taken before a Magistrate or other Officer and in the context of Kumari Peram Pun it was otherwise and the learned Judge held that there

was substantial compliance with Section 50 of the Act. This judgment does not at all advance the contention of Shri Rivankar, learned Public Prosecutor on the compliance with the mandate of Section 50 of the Act.

14. In *Vijaysinh Jadeja* (supra), the short question which arose for consideration before the Apex Court was whether Section 50 of the Act casts duty on the empowered officer to inform the suspect of his right to be searched in the presence of a Gazetted Officer or a Magistrate if he so desires or whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer can be said to be due compliance with the mandate of the said Section. The Five Judge Bench considered the decision rendered by a three Judge Bench of the Apex Court in *Joseph Fernandes vs. State of Goa* [2000 (1) SCC 707] where it was held that even when the searching officer informed him that "if you wish you may be searched in the presence of a Gazetted Officer or a Magistrate; it was held that it was in substantial compliance with the requirement of Section 50 of the Act and observed that it did not agree with the contention that there was non-compliance with the mandatory provisions contained in Section 50 of the Act.

15. In *Vijaysinh Jadeja* (supra), the Five Judge Bench considered the Constitution Bench judgment in *Baldev Singh's* case where it was concluded, " (1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section(1) of Section 50 of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing; (2) That failure to inform the person concerned about the existence of his right to be searched before a Gazetted Officer or a Magistrate would cause prejudice to an accused; and (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. It also considered the aspect 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 the 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.

16. In *Vijaysinh Jadeja* (supra), the Five Judge Bench were of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard has been conferred on the suspect vis a vis to check the misuse of power to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a Gazetted Officer or Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search and answered the reference accordingly.

17. Baldev Singh (supra), a judgment of the Five Judge Bench of the Apex Court considered the scope and ambit of Section 50 of the Act qua the right of the accused to be informed that he is entitled to be searched in the presence of a Magistrate or a Gazetted Officer and held that 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 NDPS Act. None of these judgments buttress the contention of Shri Rivankar, learned Public Prosecutor on behalf of the State that an offer of being searched before a Magistrate **or any Officer** would amount to substantial compliance to Section 50 of the Act and that any recovery made in breach thereof resulting in conviction would vitiate such conviction.

18. In the background of these judgments, i would look to the factual matrix to assess the contention of Shri Rajneesh Naik, the learned Advocate for the accused and Shri S. R. Rivankar, learned Public Prosecutor whether the impugned judgment was vitiated on account of non-compliance with the

mandate of Section 50 of the Act amongst other grounds raised in the appeal memo and whether the appellant is entitled to a reversal of a judgment on this and other counts. In that context, it would be apt to refer to the testimony of PC Polekar (Pw.4), no doubt examined prior in point of time to the panch witness but nonetheless a departmental witness who revealed about the disclosure of the information received by PSI S. Nayak (Pw.8), it being reduced to writing and sent by him to the Dy.SP for his information and thereafter after other compliances, having procured the panch witnesses to proceed for the raid alongwith the kitbox containing the weighing, packing and sealing materials amongst others and PSI S. Nayak (Pw.8) personally carrying the seal of ANC Panaji-7 with the Ashoka Emblem with him. Materially, he revealed that on reaching the spot of raid as per the prior information, PSI S. Nayak (Pw.8) had detained the appellant, introduced himself apart from the members of the raiding parties and panchas and after obtaining his personal details, told him about the information received by him that he wanted to take his personal search and in that context an offer being made to him that he had the right to be searched in the presence of a "Gazetted Officer or a Magistrate." and the appellant having declined such offer. There was no rebuttal of his testimony on such offer being made to the accused by PSI S. Nayak (Pw.8).

19. Coming to the material testimony of the pancha Balkrishna (Pw.6), he had stated that PSI S.Nayak(Pw.8) had requested him to act as a panch witness after he reported at the Police Station at 3.30 p.m. with the arrival of the second pancha fifteen minutes later and that PSI S. Nayak (Pw.8) had told both of them of the reliable information received by him about a person coming to deliver drugs to his customer at a Junction at Morjim on 21.01.2013 between 19.30 hours to 22.45 hours. PSI S. Nayak (Pw.8) also told them that he had reduced the information to writing and sent the same to the office of the DySP ANC followed by the introduction of the raiding party members including PI S. Halarnkar (Pw.7) followed by showing of the seal of the ANC Panaji, Goa-7 with the Ashoka Emblem and the kit box containing the weighing, packing and sealing materials being carried at the spot of raid with emergency and search lights.

20. Materially, on the aspect of the offer, he revealed that after the suspect was identified by PSI S. Nayak (Pw.8), PSI S. Nayak had introduced himself by his designation as also the raiding party members including the panchas to the appellant and then taken his particulars. PSI S. Nayak (Pw.8) had particularly informed the appellant that he had received reliable information that he would come to the spot to deliver

drugs to a prospective customer, that he wanted to take his personal search and that he had a right to be searched in the presence of a Magistrate or "some Officer" which the appellant declined. PSI S. Nayak (Pw.8) had also given him an offer to search the raiding party members including the panchas but the appellant had declined such an offer. Despite his cross examination, the witness maintained his earlier statement that PSI S. Nayak (Pw.8) had informed the appellant that he has a right to be searched before a Magistrate or "an Officer". In the circumstances, therefore, there is serious doubt whether this pancha was at all present at the time of the raid and when such offer was purportedly made to the appellant in compliance with Section 50 of the Act.

21. PI S. Halarnkar (Pw.7) had materially revealed about the information received by PSI S. Nayak (Pw.8), conveyed it to him and to his superior officers after reducing it to writing and thereafter he had accompanied them for the raid after appraising the raiding party members and the panchas, procured in the meantime about the reliable information and showing them the kitbox containing the weighing, packing and sealing materials apart from a typewriter and related materials. On the aspect of the offer, PI S. Halarnkar (Pw.7) had revealed that PSI S. Nayak (Pw.8) had informed the

appellant that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate and that if he so desires, his search would be conducted in the presence of a Gazetted Officer or a Magistrate but the appellant had declined the offer. PSI S. Nayak (Pw.8) had also informed the appellant that he had arrived to search the raiding party members including the panchas and he had declined the same. Without going into the other aspect of his testimony, there was no rebuttal of his statement qua the offer to the accused in compliance with Section 50 of the Act.

22. PSI S. Nayak (Pw.8) too had narrated the sequence of events from the time of the receipt of the reliable information, it being reduced to writing and being forwarded to the Dy.SP ANC for his information, the procurement of the panchas, revealing to them and the raiding party members about such information and after complying with all the formalities having proceeded alongwith them for the raid, he personally carrying the seal of ANC Panaji-7 with the Ashoka Emblem to be used during the course of the raid. At the assigned spot, he had encountered the said appellant, introduced himself by his designation as also the raiding party members, told him of the receipt of the reliable information and that he wanted to take his personal search for narcotic drugs. However, before

commencing his personal search, he had informed the appellant that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate and if he desires, his search would be conducted in their presence but the appellant had declined such an offer. He had also given the offer to search the raiding party members and the panchas but the appellant had declined the offer. He too like PI S. Halarnkar (Pw.7) was unshaken in material aspects in that regard. A pertinent reference is made to the testimony of PI S. Halarnkar (Pw.7) and PSI S. Nayak (Pw.8) since their statement being those of departmental witnesses would have carried significant force on the aspect of the offer in compliance with Section 50 of the Act provided the panch witness Balkrishna (Pw.6) had stated so in no uncertain terms and they had corroborated his version. Here is a case where the pancha did not reveal the offer as required in terms of the mandate of Section 50 of the Act and therefore an assertion by the two Police Officers, PI S. Halarnkar (Pw.7) and PSI S. Nayak (Pw.8), would be of no consequence. Materially, there was also no explanation forthcoming at the instance of the prosecution to account why the second pancha was not examined who would have lent independent credibility to their version on the offer of search and in compliance with Section 50 of the Act. It was also not the case of the prosecution as borne out from the records that

the second pancha was either dead or beyond their reach or otherwise not available for the purpose of examination. Therefore, in the light of these observations, it must be said that the statement of the pancha Balkrishna (Pw.6) on the said offer in terms of the mandate of Section 50 of the Act does not stand proved creating a serious doubt on his person at the spot and otherwise vitiating the conviction against him.

23. The pancha had otherwise stated that they had proceeded to the spot of raid in the Ritz car belonging to PSI S. Nayak (Pw.8) and driven by him in which both of them and one Constable had travelled and the second car was a Swift car bearing distinct registration number belonging to PI S. Halarnkar (Pw.7) and driven by him alongwith other Constables and two more Constables accompanying them on their motorcycles.

24. Shri Rajneesh Naik, learned Advocate appearing for the appellant pointed to his statement in the cross examination that PSI S. Nayak (Pw.8) had only told them that the information that one person was to come to deliver drugs without referring to the drugs as charas and could not account for its record in the panchanama. However, it is not a material discrepancy going to the root of the prosecution case and

therefore no advantage could be drawn in that regard nor could the impugned judgment be faulted on that count. Shri Naik, learned Advocate for the appellant also stated about him having returned in the Ritz car from the spot at Morjim on the conclusion of the raid unlike the version of PI S. Halarnkar (Pw.7) that they had come back in his Swift car from Morjim to Panaji. This again is not a vital aspect affecting the credibility of the witness on the conduct of the raid and the recovery of the purported drug charas as to affect the prosecution case. Some amount of latitude can be given to the witness having lapsed in making the statement on return either in the car driven by PI S. Halarnkar(Pw.7) or PSI S. Nayak (Pw.8).

25. Balkrishna (Pw.6) had further stated that on recovery of the contraband charas from the person of the appellant, it was put in blue polythene bag and then in a green colour envelope on which the details of the seizure were recorded by PSI S. Nayak (Pw.8) and sealed with the seal of ANC Panaji Goa-7 with the Ashoka Emblem and marked exhibit 1 which was signed by him and the other pancha and PSI S. Nayak (Pw.8). PI S. Halarnkar (Pw.7) had written something on the envelope in red pen. During his cross examination and upon being shown the green envelope exhibit 1 and the box in red ink with the writing therein, he stated that the said writing was

made by PI S. Halarnkar (Pw.7) at the spot. The envelope in question was examined on opening the sealed parcel in Court and when it was found that this writing was relating to the Crime number and the entry number in the Muddemal Register. Both these notings i.e. of the Crime number and the Muddemal Register entry number could never had been within the knowledge of the IO at the spot of raid much less being written on the envelope at the spot of raid. The clear assertion by Balkrishna (Pw.6) that this writing was made at the spot, once again creates a serious doubt on the recovery of the contraband and its packing and sealing at the spot of the raid, the benefit of which must necessarily enure in favour of the appellant as rightly submitted by Shri Naik, learned Advocate for the appellant. It creates a doubt whether the pancha was at all present at the spot of the raid and had signed the envelope at the spot or whether he was a signatory to it at the Police Station where these entries were effected as per the version of PI S. Halarnkar (Pw.7) and PSI S. Nayak (Pw.8). Moreover, the extract of the Muddemal Register produced alongwith his testimony indicates that this entry was made at the Police Station and therefore the version of the pancha that it was drawn at the spot of the raid creates a serious doubt on his presence coming from an independent witness. PSI S. Nayak (Pw.8) had confirmed that the writing

in red ink in the box on the reverse of the envelope exhibit-1 was done at the ANC Police Station and not at the spot. Assertion of the pancha Balkrishna (Pw.6) raises a doubt on his presence and ultimately his testimony as an independent witness to the entire raid.

26. Shri Rajneesh Naik, learned Advocate appearing for the appellant had also tried to carry forward his case to create doubt in the prosecution version on the premise that the direction of proceeding for the raid as given by the pancha Balkrishna (Pw.6) and PI S. Halarnkar (Pw.7) apart from PSI S. Nayak (Pw.8) were not in consonance with each other. There was a minor discrepancy where the IO had clarified that as they reached Mapusa Police Station and as there was a road block, they had taken a diversion and gone via St. Xavier's College towards Morjim unlike the statement of the pancha that from Mapusa Police Station, they had directly gone to Morjim. This is not a material contradiction as sought to be blown out of proportion by Shri Naik, learned Advocate for the appellant and as to reap any benefit therein. However, the case of the State has fallen apart primarily from the version of the pancha which clearly indicates that there was non-compliance with the mandate of Section 50 of the Act and consequently on the premise on the entry on the envelope at

the spot unlike it being made at the Police Station at the conclusion of the raid.

27. State of Rajasthan (supra) held that in appreciation in evidence, contradictions, inconsistencies, exaggerations or embellishments, improvements and irrelevant details not corroding the credibility of the witness cannot be levelled as omissions or contradictions and that they were inconsequential to disbelieve the case of the prosecution. This judgment with respect does not in any manner support the contention of Shri Rivankar, learned Public Prosecutor on behalf of the State particularly in so far as the offence under the Act is concerned. Therefore, having heard Shri Rajneesh Naik, learned Advocate for the appellant and Shri Rivankar, learned Public Prosecutor on behalf of the State, the Appeal is bound to succeed for the earlier recorded reasons and in view thereof, i pass the following :

ORDER

The appeal is allowed. The judgment of conviction is quashed and set aside and the appellant is directed to be set at liberty if not required in custody in any other case or

Crime either under the Act or any other
penal statute.

NUTAN D. SARDESSAI J.