

CRIMINAL APPEAL NO. 95 OF 1996

V/s.

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**CORAM : S.S. SHINDE AND
A.S.GADKARI, J.**
DATE : 30th October, 2018

JUDGMENT : (Per A.S. Gadkari, J.)

1. The State has preferred the present appeal against the acquittal of the respondents by the Special Judge, for Greater Mumbai under Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "said Act") in NDPS Special Case No. 35/1994 by its Judgment and Order dated 18.10.1995 for an offence punishable under Section 8(c) of the said Act.

2. Heard Shri. Yagnik, learned APP. for the State and with his able assistance we have perused the entire record.

2. It is the prosecution case that, the respondents were found in possession of approximately 1-Kg. of "heroin" on 3.1.1994, a contraband under the said Act. The Trial Court has acquitted the respondents predominantly on the ground that, there is violation of Section 42(2) and Section 50 of the said Act.

3. The record discloses that, P.W.5- Yeshwant Vatkari in his testimony has clearly admitted that, after the accused persons declined to take their search before the Gazetted officer, the Police Inspector Mr. Surya, who was a member of the raiding party informed the accused persons that, he himself was a Gazetted officer and the accused persons can offer their search to him. The said appraisal by the said police officer namely Police Inspector Mr. Surya is in violation of Section 50 of the said Act. Reliance is placed on the decision of the Supreme Court in the case of State of Rajasthan vs. Parmanand and anr. reported in 2014 ALL MR (Cri.) 1475 (S.C.).

5. A minute perusal of the record would further indicate that, there is clear violation of Section 42(2) of the Act. It is by now the settled position of law that, mere violation of Section 42(2) of the Act may not vitiate the trial. However, in the present case coupled with the fact that, there is clear

violation of Section 50 of the Act, violation of Section 42(2) of the Act can also be taken into consideration as an additional circumstance of acquittal of the accused persons, which in our opinion the Trial Court has rightly done.

6. After perusal of the entire record we are of the considered view that, there are no merits at all in the present appeal and the appeal is accordingly dismissed.

(A.S.GADKARI, J.)

(S.S. SHINDE, J.)