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

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Decided on: 30.10.2018

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CRL.L.P. 153/2018

STATE

..... Petitioner

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for State with SI Krishan Lal,
P.S. Seelampur.

Versus

FATIMA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition seeks leave to impugn the judgment dated 03.11.2017, passed by the learned Special Judge (NDPS), North-East, Karkardooma Courts, Shahdara, Delhi in case FIR No. 01/2015 registered under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Seelampur.

2. It is the petitioner's case that the impugned order is erroneous in as much as it has failed to appreciate the fact that no notice under Section 50 of the NDPS Act was required to be served; that in any case, after due intimation of her rights, the respondent had waived her rights apropos

personal search before a Gazetted Officer; the petitioner's actions were not illegal; that the search conducted was not of her but of a bag that she was carrying, from which the contraband was allegedly recovered; therefore the issuance of notice under section 50 notice was not necessary.

3. The impugned order has examined the validity of the Section 50 notice and held as under:

“51. There is another aspect regarding this question. As the recovery is shown to have been made from a theli kept in hand of the accused, learned Addl. PP argued that Sec. 50 was not applicable. And thus, even if there was violation of the said provision, the recovery effected from accused can be relied upon.

52. It has been held in State of Punjab v. Baldev Singh, (1999) 6 scc 172 that it is imperative upon the authorised officer or empowered officer to inform the accused that it is his legal right to be searched before a Gazetted Officer or a Magistrate. Violation of this will render the recovery of the contraband illegal.

53. It is now well settled that compliance of Sec. 50 of NDPS Act is required only when the person of the accused is to be searched. If accused is carrying any article like bag, briefcase, container etc. then there is no need to comply with Sec. 50 of the said Act. Reference may be made to Ajmer Singh vs. State of Haryana, (2010) 3 SCC 746.

54. However, where there is no requirement of following provisions of Sec. 50 of the Act, but still the police official chooses to give said notice, and the notice is defective and there is non-compliance of the said provisions, what would

be the fate of the recovery effected in violation the said provisions?

55. This question has already been answered by Hon'ble Delhi High Court in the case of Rakesh @ Shankar's case (supra). Hon'ble High Court relied upon Gurjant Singh's case (supra) rendered by the Hon'ble Apex Court. It was held that since the Investigation Officer chose to give a notice u/s 50 of the Act before searching the bag carried by the accused on his shoulder, the said notice should have conformed to the requirement of Sec. 50 and if there is any defect, the recovery of contraband from the accused would be per se illegal.

56. It is writ large on the face of the record of this case that the requirement of Sec. 50 of NDPS Act were not fulfilled. PW-4 himself admits that he did not tell the accused that it was her legal right to get her search conducted in presence of a Gazetted Officer or a Magistrate. In fact he had told accused that if she wanted her search could be conducted in presence of any Gazetted Officer or ACP. The use of the word ACP was improper. As can be seen, it was not communicated to her that it was her legal right to be searched before such an Officer. Thus section 50 was blatantly violated. Gurjant's case (supra) applies to the present case."

4. In view of the above discussion to the effect that there were no independent witnesses present at the time of the search of the respondent's *thaili* (bag/ things wrapped in cloth); the respondent was not informed of her statutory right to be searched before a Gazetted Officer or Magistrate, therefore, the Court agrees with the finding of the learned Trial Court that the recovery of the contraband from the respondent cannot be said to be legal.

5. Accordingly, the Court finds no merit in the petition. Accordingly, it is dismissed.

NAJMI WAZIRI, J.

OCTOBER 30, 2018

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