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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.65 OF 2019

Union of India	... Applicant
Vs.	
Sunil Srikant Joldapke and Ors.	... Respondents

Ms. Ameeta Kuttikrishnan for the Applicant.
Ms. M.H. Mhatre, APP for the Respondent – State.

CORAM : A.S.OKA AND
A.S. GADKARI, JJ.

DATE : 27th FEBRUARY 2019.

P.C. :

1 Heard the learned counsel appearing for the applicant who has tendered a compilation of copies of notes of evidence. The respondents – accused have been acquitted from the offence under section 8(C) punishable under Section 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”). According to the case of the prosecution, a secret information was received by the Customs Preventing Narcotic Cell at Pune that three persons-accused nos.1 to 3 will be transporting ‘Ganja’ of 300 kg in SUMO Vehicle at the time and date mentioned in the information. It was also disclosed that accused nos.4 and 5 would be assisting them and they would be travelling by Indica Car. After following necessary procedure, a raid was conducted. One of the grounds on which the order of acquittal is passed by the

learned Special Judge in NDPS Act is about the failure to comply with the mandate of section 50 of the NDPS Act. We have perused the evidence of PW-4 Satish Hari Kulkarni. He claims that he had apprised each of the five accused individually of section 50 of the NDPS Act in Hindi. Taking his evidence as recorded in paragraph 5 as correct, it becomes apparent that he did not inform the accused that they have a right under section 50 of the NDPS Act to be searched in the presence of a Gazatted Officer. Paragraphs 8 and 9 of the deposition suggest that even personal search of all the five accused was conducted. PW-4 has not deposed that before conducting the search, he had apprised to all the accused about their specific rights under section 50 of the NDPS Act.

2 Another contention raised by the prosecution appears to be that PW-5 T.S. Krishnamurti who was a part of the leading party was also a Gazatted Officer and that the accused had no objection to be searched in his presence. However, the said contention was rightly rejected by the learned Special Judge by relying upon the law laid down by the Apex Court in the case of *State of Rajasthan vs. Parmanand and Anr.*¹.

3 The object of sub-section (1) of section 50 is that the accused should be given a chance of being searched in presence of an independent Gazatted Officer. Assuming that the accused were informed that they can be searched in presence of T.S. Krishmurty, who admittedly was a member of the raiding party and therefore, cannot be termed as an independent Gazatted Officer. In the circumstances, finding has been recorded by the

1. AIR 2014 SC 1384

learned Special Judge that the search stands vitiated due to non-compliance with sub-section (1) of section 50 of the NDPS Act. The said finding recorded by the learned Special Judge is well supported by the evidence of the prosecution witnesses themselves and in particular PW-4. Therefore, the view taken by the learned Special Judge is certainly a possible view. Hence, no case is made out to grant of leave to prefer an appeal against acquittal. Accordingly, application is rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)