

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 113 OF 2018

Union of India

.....Applicant

Vs.

Ramesh Mangilal Pawar & Ors.

....Respondents.

Ms. Ameeta Kuttikrishnan for the Applicant.

Mr. Arfan Sait, APP for the Respondent No.1-State.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 11th FEBRUARY, 2019.

P.C.:-

By the present Application, the Union of India has sought leave to prefer an Appeal under Section 378(3) of the Code of Criminal Procedure, 1973 against the Judgment and Order dated 8th July, 2015 passed by the learned Additional Sessions Judge, Pune thereby acquitting the Respondents from the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "*the NDPS Act*").

2 Heard the learned Special Public Prosecutor and perused the record, including notes of evidence.

3 It is the case of the prosecution that, on receipt of

confidential information that the Respondents were to arrive at specific spot with approximately 20 kg. of contraband namely '*Ganja*', a trap was laid and the Respondents were apprehended on the spot. During their search, the Investigating Agency found 21 kg. of '*Ganja*' in the bag which was being carried and on the person of the Respondent No.2.

After completion of investigation, the police submitted charge-sheet.

4 The evidence on record indicates that, before taking search of the bag which was on the person of Respondent No.2, appraisal as contemplated under Section 50 of the NDPS Act was not given to the accused person. The record indicates that the appraisal was given subsequent to the search of the baggage and after noticing the contraband in it.

In view thereof, it appears that the right of the accused as contemplated under Section 50 of the NDPS Act has been violated and the recovery of the alleged contraband made at the instance of the accused becomes doubtful.

5 The Constitution Bench of the Supreme Court in the case

of *State of Punjab Vs. Baldev Singh*¹ has held that the appraisal under Section 50 of the NDPS Act is a right of the accused person which cannot be compromised in any circumstances. As noted earlier, the evidence on record clearly indicates that, the right of accused contemplated under Section 50 of the NDPC Act has been violated by the Investigating Agency.

6 It further appears from the record that a joint appraisal under Section 50 was given to the Respondents. The procedure adopted by the Investigating Agency is in an utter disregard to the settled principles of law enumerated by the Supreme Court in the case of *State of Rajasthan Vs. Parmanand & Anr.*².

The Supreme Court has held that a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purpose of Section 50. That the communication of the said right to the person who is about to be searched is not an empty formality and therefore, the prescribed procedure has to be meticulously followed. It is further held that, the communication of the right has to be clear, unambiguous and individual.

¹(1999) 6 SCC 172

²(2014) 2 SCC (Cri) 563.

The record clearly indicates that, the Investigating Agency has not complied with the mandatory provisions of Section 50 of the NDPS Act in its proper perspective in the light of the above decisions of the Supreme Court.

7 The Trial Court after assessing the evidence on record, has recorded a finding of acquittal on account of the breach of various provisions of the NDPC Act.

8 After perusing the entire record, this Court is of the opinion that the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case for grant of leave to file Appeal is made out.

Application is accordingly rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)