

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

SR. No.455

CRA-S-352-SB-2005 (O&M)

Reserved on: 22.02.2023

Date of Decision:23.02.2023

Paramjit Singh

...Appellant

Versus

State of Punjab

..Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Nayandeep Rana, Advocate/Amicus Curaie,  
for the appellant.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

**N.S. SHEKHAWAT, J.**

The present appeal is directed against the judgment of conviction and order of sentence dated 09.02.2005 passed by the learned Special Court, Rupnagar, whereby the appellant was convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- with default stipulation.

The brief fact of the case are that the FIR in the instant case was registered on the basis of a complaint lodged by ASI Charan Singh. At 07.00 AM on 08.02.2003, when ASI Charan Singh along with ASI Gulzar Singh and other police officials were present on a government vehicle for patrolling at Kacha Canal (Sirhind), a secret informer informed them that accused Paramjit Singh (appellant) was habitual of selling poppy husk by going from one place to another and at that time, he was sitting under a tree

near the bridge of Sirhind Canal, village Bhoje Majra. If a raid was conducted, he could be apprehended at the spot. Finding the information reliable, a ruqa was sent by hand through C. Paramjit Singh and the formal FIR in this was recorded. ASI Charan Singh along with other police officials raided at the disclosed place and found the accused with a bag under the tree. The bag was opened and 10 kilograms of poppy husk was found in the same. The raiding party inquired about the name and address of the accused and two samples of 250 grms each were taken out from the bag and the remaining quantity of the poppy husk was kept in the same bag. The parcels were prepared and were sealed with the seal 'CS' and the same was handed over to ASI Gulzar Singh. The case property, sample parcels and the bag were taken into possession vide a recovery memo, which was witnessed by HC Pawan Kumar and ASI Gulzar Singh. The personal search of the accused was separately conducted and on his personal search, Rs.330/- and a wrist watch was recovered from the accused, which were also taken into possession vide a separate recovery memo. The grounds of arrest were also prepared and the necessary investigation was conducted at the spot. Even the mother of the accused was informed about his arrest. After completion of the initial investigation at the spot, the accused along with the case property was produced before SI Sat Pal, SHO, Police Station Chamkaur Sahib, who verified the facts from the witnesses and the accused and had put a seal impression 'SP' on all the parcels. On the directions of the SHO, the case property was deposited with MHC Jagir Singh, who was in-charge of the Police Malkhana. One sample was sent to the Chemical Examiner by hand through C.Krishan Lal and vide report Ex.PD of the Chemical Examiner, the sample was found to be containing poppy husk. After

completion of the investigation, the challan under Section 173 Cr.P.C. was presented in the competent court.

After finding sufficient evidence against the accused-appellant, the learned trial Court ordered the framing of charge under Section 15 of the Act against the present accused/appellant, to which he pleaded not guilty and claimed trial.

In support of the prosecution case, the prosecution examined 05 witnesses, HC Jagir Singh (MHC) as PW-1, HC Krishan Lal as PW-2, SI Sat Pal, SHO, Police Station Chamkaur Sahib as PW-3, ASI Charan Singh, Investigating Officer as PW-4 and ASI Gulzar Singh as PW-5.

After the closure of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 Cr.P.C., and the entire evidence produced by the prosecution was put to the accused-appellant with an opportunity to him to explain the circumstances appearing in evidence against him. In defence evidence, the accused/appellant examined DW-1 Prem Singh and closed the defence evidence.

Learned counsel for the appellant vehemently argued that while effecting the recovery from the present appellant, the mandatory provisions of Sections 50 of the Act were not complied with and the appellant was liable to be acquitted on this sole ground alone. While elaborating, learned counsel submitted that even though the contraband was allegedly recovered from the bag held by the accused-appellant but his personal search was also conducted, which led to the recovery of Rs.330/- and a wrist watch from him. Since the police had also conducted the personal search of the appellant, it was mandatory for the prosecution to comply with the provisions of Section 50 of the Act. The said submissions have been

opposed by the learned State counsel on the ground that no incriminating evidence was recovered from the personal search of the accused-appellant, whereas from the prosecution evidence, it was established that the recovery had been effected from the bag, held by the accused-appellant in his hands and non-compliance of Section 50 of the Act would not vitiate the trial or the recovery in any manner.

I have heard the rival submissions made by learned counsel for the parties. It is apparent from the prosecution evidence that even though the personal search of the accused-appellant was conducted but the same led to recovery of Rs.330/- and a wrist watch. However, the contraband was recovered from the bag held by the accused-appellant, thus, Section 50 of the Act would not be applicable to the facts of the instant case. It has been held by the Hon'ble Supreme Court in the matter of **State of Punjab Versus Baljinder Singh AIR 2019 SC 5298**, as follows:-

*“ 12. Section 50 of the Act affords protection to a person in matters concerning "personal search" and stipulates various safeguards. It is only upon fulfillment of and strict adherence to said requirements that the contraband recovered pursuant to "personal search" of a person can be relied upon as a circumstance against the person.*

*13. The law which has developed on the point in some of the judgments of this Court may now be considered.*

*In State of Punjab v. Baldev Singh, [1999(3) RCR (Criminal) 533 : (1999) 6 SCC 172] a Constitution Bench of this Court considered, inter alia, questions as to what would be the resultant effect, in case the requirements of Section 50 were not complied with. The conclusions arrived at in para 57 of the decision were as*

*under:*

*`57. On the basis of the reasoning and discussion above, the following conclusions arise:*

*(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.*

*(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. (Underlying by us)*

*(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the*

*procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.*

*(5) 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. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.*

*(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the*

*provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.*

*(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.*

*(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.*

*(9) That the judgment in **Pooran Mal case [(1974) 1 SCC 345]** cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.*

*(10) That the judgment in **Ali Mustaffa case***

*[(1994(3) RCR (Criminal) 595 : 1994) 6 SCC 569] correctly interprets and distinguishes the judgment in **Pooran Mal case [(1974) 1 SCC 345]** and the broad observations made in **Pirthi Chand case [1996(2) RCR (Criminal) 759 : (1996) 2 SCC 37]** and **Jasbir Singh case [(1996)1 SCC 288]** are not in tune with the correct exposition of law as laid down in **Pooran Mal case[(1974) 1 SCC 345].**"*

*Subsequently, another Constitution Bench of this Court in **Vijaysinh Chandubha Jadeja v. State of Gujarat, [2010(4) RCR (Criminal) 911 : (2011) 1 SCC 609]** had an occasion to consider the case from the stand-point whether the person who is about to be searched ought to be informed of his right that he could be searched in the presence of a Gazetted Officer or a Magistrate. While considering said question, this Court also dealt with the judgment rendered in Baldev Singh's case and the discussion in paragraphs 24 and 29 was as under:*

***24. Although the Constitution Bench in Baldev Singh case [(1999) 6 SCC 172] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, 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 the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.*

*29. In view of the foregoing discussion, we are 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 viz. 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 a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under subsection (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires 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. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision." (Underlying by us)*

*14. The law is thus well settled that an illicit article seized from the person during personal search conducted in violation of the safe-guards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contra-band. But the question is, if there be any other material or article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance.*

*15. At this stage we may also consider following observations from the decision of this Court in **Ajmer Singh v. State of Haryana [2010(2) RCR (Criminal) 132 : (2010) 3 SCC 746]** :-*

*"15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its noncompliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be*

*searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res integra in view of the observations made by this Court in **Madan Lal v. State of H.P. [2003(4) RCR (Criminal) 100 : (2003) 7 SCC 465]**. The Court has observed: (SCC p. 471, para 16)*

*"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see **Kalema Tumba v. State of Maharashtra [1999(4) RCR (Criminal) 575 : (1999) 8 SCC 257]**, **State of Punjab v. Baldev Singh [(1999) 6 SCC 172]** and **Gurbax Singh v. State of Haryana [2001(1) RCR (Criminal) 702 : (2001) 3 SCC 28]**). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in **Baldev Singh** case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."*

*16. As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.*

*17. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in **Baldev Singh** clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be*

*other evidence on record, such material can certainly be looked into. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.*

*18. The decision of this Court in Dilip's case, however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh and other judgments.*

*19. Since in the present matter, seven bags of poppy husk each weighing 34 kgs. were found from the vehicle which was being driven by accused-Baljinder Singh with the other accused 7 accompanying him, their presence and possession of the contraband material stood completely established."*

Learned counsel for the appellant further submitted that in the instant case, the mandatory provisions of Section 52 of the Act have not been complied with and the present appellant was never informed about the grounds of arrest. However, the said submission is without any substance.

It is mentioned in Ex.PH, notice regarding arrest memo, that sufficient

notice was given to the appellant-accused and he was also informed about the grounds of his arrest. Not only that even mother of the appellant/accused was informed and the complete process was followed by the Investigating Officer. Thus, the submission made by learned counsel for the appellant is without any basis and is liable to be rejected.

Still further, learned counsel for the appellant submitted that there was non-compliance of Section 57 of the Act in the case in hand and recovery of the alleged contraband from the present appellant stood vitiated and was entitled to the benefit of doubt. The said submission has been opposed by learned State counsel on the ground that the provisions of Section 57 of the Act had been duly complied with and even the higher officers were informed about the raid and the recovery from the present appellant. Even it is apparent from the testimony of PW4 ASI Charan Singh that the entire case property, the accused and the witnesses were produced before the PW-3 SI/SHO Satpal and he was apprised of all the facts of the present case. Thus, there was sufficient compliance of the mandatory provisions of the Act.

Still further, learned counsel for the appellant submitted that there was delay of one day in sending the sample to the FSL. Further, no independent witness was joined, while conducting the raid and the prosecution case has not been supported by any independent witness and was liable to be rejected by this Court. The said submissions have been vehemently opposed by the learned State counsel.

I have considered the rival submissions and find no force in the arguments raised by learned counsel for the appellant. In fact, the delay of one day in sending the sample had occurred due to the official process.

However, there was ample evidence in the shape of various prosecution witnesses, which clearly shows that so long as the samples remained with the local police, there was no tampering with the sample parcels. Even the FSL report clearly shows that the seals were intact and poppy husk was recovered from the present appellant. Still further, all the prosecution witnesses were cross-examined pointedly and the nothing material could be elicited from their respective testimonies. The evidence led by the prosecution inspires confidence and is rightly relied upon by the learned trial Court, while convicting the present appellant.

However, this Court cannot loose sight of the fact that at the time of framing of charges, i.e. on 31.03.2003, the present appellant was aged about 22 years and has faced the agony of trial/appeal for about 20 years. Still further, the appellant was prosecuted for keeping in possession 10 Kg of poppy husk which is non-commercial in nature. As per the custody certificate produced by the learned State counsel, the present appellant has undergone 16 days of actual custody out of total sentence of 06 months. The custody certificate further shows that the appellant was not involved in any other criminal case after he was released on bail on 18.02.2005. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the period already undergone by him.

In view of the above discussion, the impugned judgment of conviction dated 09.02.2005 passed by the learned Special Court, Rupnagar, is upheld. However, the order of sentence dated 09.02.2005 is modified to the extent that the substantive sentence of imprisonment awarded by the learned trial Court is reduced to the period already undergone by the appellant. Further, the amount of fine is enhanced from

Rs.5,000/- to Rs.30,000/- which shall be deposited by the appellant with Punjab and Haryana High Court Bar Association Lawyers' Family Welfare Fund within a period of 03 months; failing which, the appellant shall undergo rigorous imprisonment for a period of 02 months as observed by the learned trial Court in its order of sentence dated 09.02.2005.

Resultantly, the present appeal is partly allowed.

Pending application(s), if any, is also disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

In the end, I record my appreciation for Mr. Nayandeep Rana, learned Amicus Curiae, who had rendered his able assistance to this Court.

23.02.2023  
mks

**(N.S. SHEKHAWAT)**  
**JUDGE**

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO