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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-3029-SB-2010 (O&M)

Reserved on: 12.04.2023

Date of Pronouncement: 08.06.2023

Bhim Nath

...Appellant

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. K.D.S Hooda, Advocate
for the appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. Feeling aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence dated 21.09.2010, passed by learned Special Court, Ferozepur, whereby the present appellant was convicted for the offence punishable under Section-18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the "Act") and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.100000/- along with default stipulation, the appellant has preferred the present appeal before this Court.

2. Shorn of unnecessary details, the prosecution story, as it emanates from the report under Section 173 Cr.P.C, is that on 07.04.2008, Amritpal Singh , SI along with other police officials were going towards railway station from Ghumiar Mandi. The police party reached Peer Baba Dargaha and the

accused was seen coming from the opposite side carrying a black bag in his right hand. However, on seeing the police party, the accused became nervous and turned towards his left side. The police party also got suspicious and stopped its vehicle. Amritpal Singh, SI apprehended the accused with the help of other police officials and inquired about the name and address of the accused, who disclosed his name and address to the police party. Amritpal Singh, SI made efforts to join the independent witnesses, but nobody preferred to join. Ultimately, Amritpal Singh, SI told the accused that the police party had the suspicion that there was some intoxicant in his bag and apprised him of his legal right to get his search conducted in the presence of a Gazetted Officer or a Magistrate. However, the accused opted to get his search conducted in the presence of a Gazetted Officer and the memos in this regard were prepared, which were signed by the accused and attested by SI Dogar Singh and ASI Pargat Singh. On this, Amritpal Singh, SI requested Rajinder Singh DSP(D), to reach at the spot and after sometime Rajinder Singh DSP(D), along with his staff reached at the spot and on reaching there, he introduced himself to the accused and informed him that he was a Gazetted Officer of the Punjab Police and even he had suspicion that there was some intoxicant in his possession and the search of the bag in his possession was to be conducted. Even he apprised the accused that he has legal right to get the search conducted in the presence of a Magistrate or any other Gazetted officer. However, the accused reposed confidence in the Rajinder Singh DSP(D), and a consent memo was separately drawn, which was signed by the accused and the witnesses. Amritpal Singh, SI conducted the search of the bag at the instance of DSP(D) and it was found that

opium was kept in the same, which was wrapped in a glazed paper. After weighing, the opium was found to be six Kgs. Out of the recovered opium, two samples of 10 grams each were separated and converted into seal parcels and the remaining opium was also kept in a plastic container and was converted into bulk parcels. The sample parcels as well as bulk parcel of the remainder quantity of the contraband were sealed with the seal “AS” and specimen seal chit Ex.P1 was prepared separately. The seal after use was handed over to SI Dogar Singh. Rajinder Singh DSP(D), also affixed his seal bearing impression “RS” on the abovesaid parcels, bulk parcel as well as the on chit Ex.P1 and retained the seal with himself. The case property was formally taken into possession by the police and a recovery memo was prepared in this regard, which was signed by the Rajinder Singh DSP(D) and the witnesses. Even the personal search of the accused was conducted and a sum of Rs.290/- was recovered and was taken into possession by the police. The accused was formally arrested in the present case and his ground of arrest memo was also prepared. A formal ruqa was sent to the police station, on which the FIR was registered by SI, Subhash Chander. After completing the legal formalities at the spot, Amritpal Singh, SI produced the accused along with case property and witnesses before the SI/acting SHO Bohar Singh, who again verified the facts from the accused as well as the witnesses and affixed his seal bearing impression “BS” on all the parcels and on the specimen seal chit. The case property was taken into possession and after completion of necessary investigation, the challan was presented in the Court for holding the trial against the appellant.

3. After going through the challan, the learned Trial Court found that the appellant/accused had committed an offence punishable under Section 18 of the “Act” and he was ordered to be charge-sheeted accordingly. The appellant pleaded his innocence and claimed trial.

4. After the framing of charges, the trial formally commenced before the learned Trial Court. The prosecution examined PW-1 SI, Bohar Singh, who was posted as SHO at Police Station, Cantt, Ferozepur on the said day. The case property, witnesses and the accused were produced before him and he had kept the entire case property in police Malkhana under his supervision. Even the accused was kept in the lock-up and he recorded the statement of Amritpal Singh, SI under Section 161 Cr. P.C. On the next day, he produced the accused along with case property before the Learned Illaqua Magistrate with police requests Ex P.3 to Ex. P5, on which the Illaqua Magistrate passed the orders Ex.P6 to Ex.P8 and the accused was remanded to police custody. The case property was ordered to be deposited in judicial Malkhana. However, till the receipt of the order, he kept the case property in police Malkhana and on receipt of the order, he immediately deposited the case property in intact condition in the judicial Malkhana. On 10.04.2008, he handed over one sample parcel of opium containing 10 grams, duly sealed with specimen seal chit, which was pasted on CFSL form Ex.P10 and gave it to HC Raj Kulwinder Singh for depositing the same in the office of FSL. In his cross-examination, he admitted that as per the order dated 08.04.2008 passed by the learned JMIC, Ferozepur, the case property and the samples were produced by the Investigating Officer before the Illaqua Magistrate on 08.04.2008 and the same

were returned to the Investigating Officer. He produced the accused and the case property before Illaqua Magistrate on 08.04.2008. On return to the police station, he kept the case property in Malkhana of Police Station Cantt under his supervision. He admitted that the Court passed the order on 08.04.2008 to deposit the case property in Judicial Malkhana, but he deposited the case property in judicial Malkhana, only after the receipts of the orders of the Court and he got the copy of the order of the Court on 11.04.2008. The prosecution further examined PW-2 SI, Dogar Singh, who was with the police team headed by SI, Amritpal Singh and supported the case of the prosecution in all respect. PW-3 SI Amritpal Singh also supported the case of the prosecution, as mentioned in the FIR. In his cross-examination, he admitted that the cloth cover of the container produced on 21.04.2010 before the learned Special Court was in torn condition. He further admitted that it is correct that some of the material was leaking out of the bulk parcel. He further admitted that only two seals on the duplicate sample parcels were legible and the third seal was not legible. The prosecution further examined PW-4 HC Raj Kulwinder Singh, who stated that on 10.04.2008, SI Bohar Singh handed over to him one parcel containing 10 grams of opium sealed with the seal bearing impressions “BS, RS and AS” along with specimen seal chit Ex.P1 and CFSL form Ex.P10 for depositing the same in the office of the Chemical Examiner, Amritsar. The prosecution further examined PW-5 Rajinder Singh, who was acting as DSP(D), Ferozepur on the said day and had reached at the spot.

5. After the examination of the prosecution witnesses, the statement of the accused was recorded under Section 313 Cr.P.C. He stated that he was

innocent and was resident of village Arrian Wala Khurd@ Killi, Tehsil and District Ferozepur for the last many years and one Harnam Singh Mokal was taking treatment from him for his intestines diseases. He was cured by his treatment and he donated one kila of land and died in the year 2003. After his death, his grand son Randhir [Singh@Lalli](#) asked him to vacate the land several times, but he did not agree as he had established a dera in the share given to him and his followers used to come there. Randhir Singh @Lalli in connivance with SI Amritpal Singh got him arrested and also made a false complaint to the police against him. Whereas a matter of fact, he was residing at Village Arrian Wala [Khurd@Killi](#), since 2002 and he had enough evidence to show that. However, in his defence, he did not examine any witness to support his case.

6. Learned counsel for the appellant vehemently argued that in the present case, the learned Trial Court had not appreciated the evidence in the correct perspective and the impugned judgment is legally unsustainable. Learned counsel further contended that in the present case, the case property was recovered on 07.04.2008 and it was produced before the learned Magistrate on 08.04.2008. However, despite orders, the case property was not deposited in the judicial Malkhana and the possibility of the tampering with the parcel containing intoxicant, could not be ruled out. Learned counsel further submitted that even during the course of trial, the case property was produced and third seal on the parcel was not visible. He further submitted in such a situation, the possibility of tampering with the parcel could not be ruled out. He further submitted that in the present case, the prosecution simply stated that they tried to join the independent witnesses, but none of the witness had joined.

He further contended that the entire case was based on the testimonies of the official witnesses, who had colluded with Randir [Singh@Lalli](#) grand son of Harnam Singh Mokal. Thus, the impugned judgment is legally unsustainable. Learned counsel further contended that the Magistrate did not affix his signatures on the samples and even his seal was missing, while the sample was produced in the Court. Further the CFSL form was not filled at the spot and this had caused great prejudice to the case of the present appellant. Learned counsel for the appellant vehemently argued that in the present case the mandatory provisions of Section 50 were not complied with by the prosecution and appellant deserve to be acquitted on this ground alone.

7. Countering the said submissions, learned State counsel submitted that the impugned judgment is based on correct appreciation of evidence and the settled law. Even on getting the orders from the Court, the police had immediately deposited the bulk parcels as well as the sample parcels with the judicial Malkhana. Even prior to that, as per the certification of the prosecution witnesses, the samples remained intact and there was no tampering with the samples. Apart from that, the police officials had no enmity with the present appellant and it cannot be believed that such a huge quantity of contraband was falsely planted on the present appellant. Apart from that, the accused had led no evidence to show the proximity of the police with Harnam Singh Mokal, who had died. Learned counsel for the State further submitted that the recovery had taken place from the bag and not from the personal search of the accused. Consequently, the mandatory provisions of Section-50 would not be applicable to the facts of the instant case.

8. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

9. I find no substance in the argument raised by the learned counsel for the appellant that the case property was deposited late in the judicial Malkhana and serious prejudice had been caused to the present appellant. In fact, the prosecution examined PW-1, SI Bohar Singh, who was working as SHO on the said day. SI, Amritpal Singh Incharge Narcotic Control Cell produced before him two sample parcels of opium containing 10 grams each and one bulk parcel of opium containing 5 Kgs 980 grams, duly sealed. He kept the entire case property in the police Malkhana under his supervision and there was no tampering with the case property. On the next day, i.e 08.04.2008, he produced the case property before the Illaqua Magistrate with police requests Ex.P3 to Ex.P5, on which the learned Illaqua Magistrate passed the orders Ex.P6 to Ex.P8. After getting the certified copy of the order, the case property was immediately ordered to be deposited in the judicial Malkhana. This was further clarified by the said witness in his cross-examination. He admitted that as per the order dated 08.04.2008, passed by the JMIC, Ferozepur, the case property and the samples were produced by the Investigating Officer before the Illaqua Magistrate on 08.04.2008 and the same were returned to the Investigating Officer. He further clarified that the Court passed the order on 08.04.2008 to deposit the case property in judicial Malkhana, but he deposited the case property in the judicial Malkhana only after receipt of the orders of the Court and he got the copy of the order of the Court on 11.04.2008 and on the same day, he deposited the case property in

judicial Malkhana. Consequently, there is no substance in the arguments raised on behalf of the learned counsel for the appellant.

10. Learned counsel for the appellant further vehemently argued that the entire prosecution case hinges on the testimonies of the official witnesses and there was no independent corroboration of the case and the false recovery was planted on him.

11. I have considered the said submission in the light of the evidence adduced by the prosecution and settled cannons of the law. The law is well settled that the testimonies of the official witnesses cannot be discarded on the ground of their official status. It is a matter of common experience that in cases of smuggling, normally the private witnesses are not willing to join the raiding parties. In the present case also, PW-2 SI Dogar Singh had specifically stated that efforts were made to join the independent witnesses, but nobody was willing to join. Apart from that, I have carefully perused the testimonies of the five official witnesses produced by the prosecution, who had been searchingly cross-examined and had withstood the test of cross-examinations and the contentions raised by learned counsel for the appellant is repelled by this Court.

12. Learned counsel for the appellant, while referring to the statement under Section 313 Cr.PC submitted that it was a case of false implication. In fact, the present appellant was resident of Village Arrian Wala Khurd@ Killi, Tehsil and District Ferozepur for the last several years. A person namely Harnam Singh Mokal used to get his treatment from him for his intestines disease. He was cured by his treatment and he had donated one kila land by

way of an orally settlement. Harnam Singh Mokal died in the year 2003 and thereafter, his grand son Randhir Singh @Lalli asked him to vacate the said land, but the present appellant did not agree to the same and he had established a dera for his followers. However, Randhir Singh @Lalli in connivance with SI Amritpal Singh got arrested him and a false case planted on him. After sending him to jail, they had demolished the entire dera and the possession was taken by the Randhir Singh @Lalli. He has wrongly shown to be a resident of Jakhran Wal, P.S Peelian Wanga, District Hanumangarh. In fact, he was residing in village Arrian Wala Khurd@ Killi, Tehsil and District Ferozepur since 2002 and there was sufficient evidence to that effect. Learned counsel for the appellant could lead any evidence to buttress the said argument. This Court, has further considered the submissions made by learned counsel for the appellant that there was breach of mandatory provision of Section 50 of the NDPS Act and the appellant was liable to be acquitted only on the ground of non-compliance of mandatory provision of law. However, there is no force in the said contention as the recovery of the contraband had taken place from the bag, which was held by the appellant in his hand and not from the personal search of the accused. It requires to be noticed that the question of compliance or non-compliance of Section 50 of the NDPS Act is relevant only where the search of a person is involved and said Section is not applicable nor attracted, where no search of the person is involved. Search and recovery from a bag, brief case, container etc. does not come within the ambit of Section 50 of the Act. Firstly, Section 50 expressly speaks of the search of the person only. Secondly, Section 50 speaks of right of the person to be searched by a Gazetted

Officer or a Magistrate for the purpose of search. Thirdly, this issue is no more res integra in view of the observations made by Hon'ble Supreme Court in the matter of "***Madan Lal Vs. State of Himachal Pradesh, 2003 (4) RCR Criminal 100***;- where the Hon'ble Supreme Court held that Section 50 only applies in case of personal search of a person and it does not extend to search of a vehicle or a container or a bag or a premises. The language of the section 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 of the Hon'ble Supreme Court in the matter of ***State of Punjab Vs. Baldev Singh 1999(3)RCR Criminal 533: (1999) 6 SCC 172.***

13. In the matter of State of ***Himachal Pradesh Vs. Pawan Kumar, 2005 (4) SCC 350: 2005(2) RCR(Criminal) 622*** the Hon'ble Supreme Court held as follows:-

“A bag, briefcase or any such article or container etc. can under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body or a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include

these articles within the ambit of the word “person” occurring in Section 50 of the Act.”

After discussion on the interpretation of the word ‘person’, this Court concluded:-

“that the provisions of Section 50 will come into play in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which the accused may be carrying.

The Court further observed:-

“In view of the discussion made, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag, which was being carried by the accused.”

It has been held by the Hon’ble Supreme Court in the matter of **State of Punjab Vs. Baljinder Singh (2020) 1 RCR Criminal 58: 2019 AIR 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 fulfilment 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.

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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 accompanying him, their presence and possession of the contraband material stood completely established.

14. Even this Court finds no substance in the argument raised by learned counsel for the appellant that the CFSL report was not filled at the spot and it was filled by the police subsequently. In fact, this Court agrees with the findings recorded by the Trial Court that there is chit affixed on the CFSL form which clearly shows that the parcel containing sample was sent to the office of Chemical Examiner, which was in an intact condition and the seals were very clear. On the same day, the office of Chemical Examiner had received the samples in intact condition and after examining the same, the contents were found to be opium. Apart from that the cloth cover of the case property was in torn condition, when the parcels were produced by the police in the Court. However, as a matter of fact, the recovery had taken place on 07.04.2008 and the case property was duly sealed by the police party. However, the case was property was lying in the judicial Malkhana for almost two years and was produced in the Court 21.04.2010. It is apparent that during this period, some damage was caused to the case property and the seals and no benefit can be derived by the appellant out of the same.

15. Even otherwise, I have carefully perused the findings recorded by the learned Trial Court and the learned Trial Court has correctly appreciated the evidence adduced by both the sides. The learned Trial Court has recorded good and valid reasons, while convicting the present appellant. Thus, the

appeal sans merit and deserves to be dismissed.

16. Sequally, the impugned judgment of conviction and order of sentence dated 21.09.2010, passed by learned Special Court, Ferozepur are ordered to be upheld and the appeal is accordingly dismissed.

17. All pending applications, if any, are also disposed off, accordingly.

18. 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.

08.06.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No