

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1243-SB of 2015

Date of Decision: 19.05.2023.

Jullias Francis

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. K.S. Dadwal, Advocate for the appellant.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

In NDPS Case No.000219 of 2014 arising out of FIR No.165 dated 03.10.2013 registered at Police Station Bhogpur, District Jalandhar, accused Jullias Francis (appellant herein) has been convicted by the Court of learned Special Court, Jalandhar under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide judgment dated 12.02.2015; and vide a separate order of the even date, he has been sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1 lac with default sentence of one year rigorous imprisonment.

2. Against the afore-said judgment of conviction and order of sentence, this appeal has been preferred. The appeal was admitted on 18.03.2015, and recovery of fine was stayed. To avoid confusion, the appellant shall be referred as accused in the later part of the judgment.

3. As per prosecution case, on 03.10.2013, ASI Bhupinder Singh,

posted at police station Bhogpur, Jalandhar along with HC Bhagwant Singh and other police officials was on patrolling duty. The police party was going from Bhogpur towards Village Manekrai, Kojha Kotla. When the police party reached ahead of Village Manek Rai, the accused was seen coming on foot. On seeing the police party, the accused got scared and suddenly turned towards fields. With the help of other police officials, he was apprehended. On asking, he disclosed his name as Julius Francis son of Satar Masih. ASI Bhupinder Singh gave his introduction to the accused and told that he is suspecting some contraband in his possession and his search was to be conducted and also apprised about the legal right to get his search conducted from any Gazetted Officer, Magistrate or from him. The accused reposed confidence in the ASI Bhupinder Singh, who prepared the consent memo Ex.P1 of the accused in this respect. ASI Bhupinder Singh tried to join independent witness, but no one was available. He conducted search of the accused in the presence of police officials, which lead to the recovery of polythene bag containing narcotic powder from the left pocket of his trouser. The Investigating Officer ASI Bhupinder Singh separated two samples of 5 grams each of the narcotic powder and put into separate parcels and the remaining bulk contraband was weighed, which came to 160 grams and the same was put into a separate parcel. The Investigating Officer sealed all the parcels with his seal bearing impression 'BS' and also prepared sample seal impression on form no.29 Ex.PX. The seal after use was handed over to HC Bhagwant Singh. The case property was taken into police possession vide recovery memo Ex.P4, which was attested by HC

Bhagwant Singh and HC Inderjit Singh. Accused was arrested vide memo Ex.P5 and his personal search memo Ex.P6 was prepared by the IO, who then sent ruqqa Ex.P7 to the police station through PHG Jaspal Singh, on the basis of which FIR Ex.P8 was registered by SI Satpal. ASI Bhupinder Singh prepared rough site plan Ex.P9 with correct marginal notes. SHO/Inspector Parminder Singh verified the facts and finding the case property and sample parcels in intact condition, put his seal bearing impression 'PS' on all the parcels and prepared sample seal impressions and affixed on form No.29. On the next day, the Investigating Officer acquired the case property from the MHC and produced the same along-with accused before learned Magistrate. The learned Magistrate finding the case property in intact condition seen, signed and returned the same to the Investigating Officer and also passed the relevant order. After completing necessary formalities of investigation, challan was presented in the court.

4. The accused was charge-sheeted under Section 22 of the NDPS Act on 02.06.2014, to which he pleaded not guilty and claimed trial.

5. To prove the charge, prosecution examined following witnesses:

(a) PW-1 HC Bhagwant Singh deposed that on 03.10.2013, he was posted at police station Bhogpur. Being member of the police party headed by ASI Bhupinder Singh, they were on routine patrolling in connection with checking of bad elements on private vehicles. Fully supporting the prosecution case as to how the accused was apprehended

and contraband recovered from him, he proved the various steps taken by the IO. He has also proved the bulk parcel as well as parcel containing second sample MO1 and MO2.

(b) PW-2 MHC Satnam Singh tendered into evidence his duly sworn affidavit Ex.PW-2/A and deposed that on 03.10.2013 while he was posted at Police Station Bhogpur as MHC, SHO Parminder Singh deposited with him three parcels containing bulk and sample parcels and form No. M-29. On 04.10.2013, he handed over the same to ASI Bhupinder Singh for production of the same before the Illaqa Magistrate and on the same day on return to the police station, the Investigating Officer deposited the case property and the sample duly seen by Judicial Magistrate. On 07.10.2013, he sent one sample parcel containing narcotic powder to the office of Chemical Officer vide road certificate No.937 through C. Banarsi Dass, duly sealed with the seals bearing impressions BS and PS and further deposed that he did not tamper with the case property and samples till the same remained in his custody.

(c) PW-3 ASI Bhupinder Singh (I.O.) deposed that while posted at police station Bhogpur, Jalandhar, he along-with HC Bhagwant Singh, HC Inderjeet Singh and PHG Jaspal Singh and other police officials was on patrolling duty in connection with checking of bad elements on private vehicles and the police party was going from Bhogpur towards village Manekrai, Kojha Kotla. He deposed as to in what circumstances the accused was apprehended. He gave his introduction to the accused and told him that he is suspecting some contraband in his possession and his search was to be conducted and also apprised about the legal right to get

his search conducted from any Gazetted Officer, Magistrate or from him, but the accused reposed confidence in him. He prepared the consent memo Ex.P1 of the accused in this respect. He deposed that he tried to join independent witness, but no one was available. He conducted search of the accused in the presence of police officials which led to the recovery of polythene bag containing narcotic powder from the left pocket of his trouser. He separated two samples of 5 grams each of the narcotic powder and put into separate parcels and the remaining bulk contraband was weighed, which came to 160 grams and the same was put into a separate parcel. He sealed all the parcels with his seal bearing impression BS and also prepared sample seal impression Ex.P2 on form no.29 Ex.PX. He also prepared his seal impressions at point A of sheet Ex.P3. The seal after use was handed over to HC Bhagwant Singh. The case property was taken into police possession vide recovery memo Ex.P4, which was attested by HC Bhagwant Singh and HC Inderjit Singh. He then sent ruqqa Ex.P7 to the police station through PHG Jaspal Singh, on the basis of which FIR Ex.P8 was registered by SI Satpal. He further rough site plan Ex.P9 and that accused was arrested and his memos of arrest-cum-intimation Ex.P5 and personal search Ex.P6 were prepared. On return to the police station, he produced the case property, sample parcels and the accused before SHO/Inspector Parminder Singh, who verified the facts and finding the case property and sample parcels in intact condition, put his seal bearing impression PS on all the parcels and prepared sample seal impressions Ex.P2/A and affixed on form No.29 Ex.PX and also affixed his seal impression at point B of sheet Ex.P3 and

directed the MHC to deposit the case property, sample parcels along-with forms M-29 in safe custody. On the next day, he acquired the case property from the MHC and produced the same along-with accused before learned Magistrate vide applications Ex.P10 and Ex.P11. The learned Magistrate finding the case property in intact condition, seen, signed and returned the same to him and also passed the relevant orders Ex.P12 and Ex.P13. On return to the police station, he deposited the case property with the MHC with seals intact. He has also proved bulk parcel MO1 and sample parcel MO2.

(d) PW-4 C. Banarsi Dass tendered into evidence his duly sworn affidavit Ex.PW4/A and deposed that he had taken sample parcel containing narcotic powder on 07.10.2013 and deposited the same in the office of Chemical Examiner and on return to the police station, he handed over the receipt to the MHC on the same day.

(e) PW-5 Inspector Parminder Singh deposed that on 03.10.2013 while posted as SHO Police Station Bhogpur, ASI Bhupinder Singh produced the accused along-with the case property and two sample parcels containing intoxicant powder together with form No. M-29, before him. He verified the facts and finding the same in intact condition, he put his seal impression PS on all the parcels and also prepared sample seal impression Ex.P2/A and affixed on form No.29 Ex.PX. He directed the MHC to deposit the case property and sample parcels in safe custody along with form No. M-29 and put the accused behind the lock-up. His statement was recorded by the Investigating Officer. He has also proved the bulk case property MO1 and duplicate parcel MO2.

6. In his statement recorded under Section 313 Cr.P.C., the accused pleaded false implication and controverted the incriminating circumstances appearing in the evidence produced by the prosecution against him. According to him, no recovery was effected from him. He was walking in the street with head phones on his ear, due to which he could not hear the horn of the Police vehicle. To satisfy their ego, the police people falsely implicated him in this case.

7. To support his defence, accused examined Mustak Masih, the Panch of Village as DW1, who supported the defence of the accused.

8. After hearing both the sides and perusing the record, learned trial Judge held the accused to be guilty under Section 22(c) of the NDPS Act, convicted him thereunder and sentenced him as per the details given earlier.

9. (i) Challenging the conviction, it is contended by learned counsel that conviction of the accused is based on forged and fabricated consent memo and recovery memo, inasmuch as signatures of the accused taken on the arrest memo are there but on rest of the documents like consent memo etc., his signatures are totally different and have been forged and fabricated as evident from the documents. Learned counsel contends that no police official will allow the accused to sign in two different ways on two different documents specially when these are prepared not only on the same day but almost at the same time and this fabrication by the Police vitiates the entire process.

(ii) Learned counsel further contends that there is a complete violation of Section 50 of the NDPS Act, inasmuch the offer given to the

accused was either to get himself searched before gazetted officer or Magistrate or before ASI Bhupinder i.e. Investigating Officer of the case.

To support this contention, learned counsel referred to ***State of Rajasthan Vs. Parmanand and another, 2014 (2) Law Herald (SC) 913.***

It is pointed out that neither any gazetted officer nor any senior police officer was called at the time of search or recovery.

(iii) Further contention raised by learned counsel for the appellant is that no independent witness was associated despite the fact that recoveries are shown to have effected during day time and despite the fact that passer-byes were passing through the area. False implication of the accused is also alleged on the ground that seal of Investigating Officer on Form No. M-29 (Ex. P.X) and that of sample seal impression (Ex.P.3) are in different ink.

(iv) Not only this, although the consent memo, arrest memo and recovery memo are purported to have been prepared prior to sending ruqqa to the Police Station and before coming to know of the FIR Number by the Investigating Officer, these documents contain the FIR Number.

(v) Still further, the seal of the Investigating Officer remained in possession of his junior HC Bhagwant Singh and so there is every possibility of tampering with the seal of the sample. Further attention is drawn towards the delay of four days in sending the sample to the Chemical Analyst.

With all these submissions, prayer is made by learned counsel for the appellant to set aside the impugned judgment of conviction and acquit the

appellant-accused.

10. Learned State Counsel, on the other hand, contended that the learned trial Court has appreciated the evidence on record in right perspective and has rightly convicted the accused- appellant.

11. I have considered submissions of both the sides and have perused the record carefully.

12. The principle contention raised by learned counsel for the appellant is regarding the non-compliance of Section 50 of the NDPS Act. The provision reads as under:-

“Section 50 - Conditions under which search of persons shall be conducted:

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to

search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

13. In **State of Punjab Vs. Baldev Singh, 1999 6 SCC 172,**

Constitutional Bench of Hon'ble Supreme Court considered the question as to whether the compliance of Section 50 of the NDPS Act is mandatory or not and if it is so, what is the effect in case of breach thereof. After considering the relevant judgments on the point, following conclusions were drawn: -

"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.

(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](#)."

14. In ***Vijaysinh Chandubha Jadeja v. State of Gujarat: (2011) 1 SCC 609***, another Constitution Bench of the Supreme Court considered the question whether compliance of [Section 50](#) of the NDPS Act would be sufficient. The Court answered in the negative and held that the obligations of the authorized officer under [Section 50](#) (1) of the [NDPS Act](#) is mandatory and requires strict compliance. The relevant extract of the said decision is set out below:-

"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 sub-section (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.

31. We are of the opinion that the concept of "substantial compliance"

with the requirement of [Section 50](#) of the NDPS Act introduced and read into the mandate of the said section in Joseph Fernandez [(2000) 1 SCC 707 : 2000 SCC (Cri) 300] and Prabha Shankar Dubey [(2004) 2 SCC 56 : 2004 SCC (Cri) 420] is neither borne out from the language of sub-section (1) of [Section 50](#) nor it is in consonance with the dictum laid down in Baldev Singh case [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080] . Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of [Section 50](#) had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

32. We also feel that though [Section 50](#) gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

15. Thus, though in **Baldev Singh's case (supra)**, it was held that it is difficult to interpret [Section 50\(1\)](#) of the NDPS Act to read that it is mandatory that in all cases, search must be conducted before a Gazetted Officer or a Magistrate. Clearly, if [Section 50\(1\)](#) of NDPS Act is read to mean that it is necessary in all cases that a search be conducted before a Magistrate or a Gazetted Officer, there would be no purpose in informing the suspect of his right to be searched before such officers. The entire object of informing the suspect, who is proposed to be searched, about his/her right is to enable him to exercise this right - the right to be searched before a Magistrate or a Gazette Officer. However, in **Vijaysinh Chandubha Jadeja (supra)**, Hon'ble Supreme Court had also observed that the obligations of the authorized officer under [Section 50\(1\)](#) of the

NDPS Act is mandatory and requires strict compliance. Failure to comply with the said provision would render the recovery of the illicit article suspect and vitiate the conviction. Though at the same time, the Court also observed that "Thereafter, the suspect may or may not choose to exercise the right provided to him under the said proviso".

16. In *Ashok Kumar Sharma v. State of Rajasthan: (2013) 2 SCC 67*, the Supreme Court considered a case where the authorized officer had merely informed the accused (appellant therein) that he can be searched before any Magistrate or Gazetted Officer, if he so wished. The Supreme Court held that the same did not comply with the mandatory procedure of [Section 50](#) of the NDPS Act and, thus, vitiated the entire proceedings. The Court reasoned that the accused was only informed that he could be searched before a Magistrate or a Gazetted Officer if he so wished, however, the fact that the accused had a right under [Section 50](#) of the NDPS Act to be searched before the Gazetted Officer or a Magistrate was not made known to him.

17. The above decision also makes it clear that the mandate of [Section 50\(1\)](#) of the NDPS Act is to ensure that the authorized officer informs the person proposed to be searched about his right to be searched before a Magistrate or a Gazetted Officer. The authorized officer is also obliged to take the concerned person (the suspect) to the nearest Gazetted Officer of any departments mentioned in [Section 42](#) of the NDPS Act or to the nearest Magistrate, if such person so requires. In *Vijaysinh Chandubha Jadeja (supra)*, the Supreme Court had also observed that though [Section 50](#) of the NDPS Act gives the option to the empowered officer to take the person suspect either before the nearest Gazetted

Officer or to a Magistrate; and in the first instance, an endeavor should be made to produce the suspect before the nearest Magistrate. This, obviously, would follow only 'if the person so requires'.

18. In view of the decisions as mentioned above, it is no longer res integra that it is mandatory to comply with [Section 50](#) of the NDPS Act. There is also no ambiguity as to manner in which Section 50 of the NDPS Act is required to be complied. Plainly, there is no requirement to conduct the search in the presence of a Magistrate or Gazetted Officer, if the person proposed to be searched did not so desire, after being informed of his right in this regard. The words "if such person so requires" as used in [Section 50\(1\)](#) of the NDPS Act make it amply clear that the person to be searched would be taken before a Magistrate or a Gazetted Officer, only if he so requires.

19. In ***State of Rajasthan Vs. Parmanand and another (supra)***, Hon'ble Supreme Court held that the idea behind Section 50(1) of the NDPS Act is that accused be searched in presence of an independent officer. The officer, who was part of raiding party, cannot be called an independent officer. In the case before Hon'ble Supreme Court, the accused were informed by the Investigating Officer that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW J.S. Negi, the Superintendent, who was a part of the raiding party and that the accused informed the Investigating Officer that they would like to be searched before J.S. Negi by the Investigating Officer. Holding the same to be breach of Section 50 of the NDPS Act, Hon'ble Supreme Court held as under:-

“15. We also notice that PW-10 SI Qureshi informed the

respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of [Section 50\(1\)](#) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when [Section 50\(1\)](#) of the NDPS Act does not provide for it and when such option would frustrate the provisions of [Section 50\(1\)](#) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in concluding that breach of [Section 50\(1\)](#) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal.”

20. In the present case, the testimony of PW3 ASI Bhupinder Singh, the Investigating Officer of the case clearly reveals that after introducing himself to the accused, he told him that his search was to be conducted and that he (accused) had the legal right to get his search conducted from him (ASI Bhupinder Singh) or from some police gazetted officer or from some Magistrate.

21. It is, thus, clear that there is double breach of Section 50 of the NDPS Act. The Investigating Officer could not offer the search of the accused to be conducted by him (Investigating Officer) or by any

member of the raiding party nor it was to be told that he had the right to be searched from police gazetted officer. The legal right to be conveyed to the accused was to be searched either before a gazetted officer or in the presence of some Magistrate.

22. It is, thus, clear that there is violation of mandatory provisions of Section 50 of the NDPS Act and on this ground itself, the entire proceedings stand vitiated and accused deserve to be acquitted.

23. Apart from above, although joining of independent witness from the public at the time of recovery proceedings is not *sine quo non* to believe the testimony of police officials but it depends upon facts and circumstances of each case, as to whether the testimony of police officials is worth credence or not. In the present case, non-joining of the independent witness from the public despite availability, as has come in the testimony of PW3 ASI Bhupinder Singh, assumes significance considering not only the non-compliance of the mandatory provision of Section 50 of the NDPS Act as has been noted above, but also on account of other factors.

24. As per the prosecution version, and as stated by PW3 ASI Bhupinder Singh, he sent ruqqa Ex.P7 to the Police Station through PHG Jaspal Singh, resulting into registration of the formal FIR Ex.P8, only after the recovery proceedings had already been completed at the spot. As has come in his testimony that prior to sending the ruqqa Ex.P7, he had already prepared consent memo Ex.P1, Form M-29 Ex.PX, specimen seal impression sheet Ex.P3 and recovery memo Ex.P4. Obviously, it is after coming back of PHG Jaspal Singh to the spot that Investigating Officer

could have come to know about the FIR number, which was registered on the basis of ruqqa Ex.P7. However, it is noticed that on the form No. M-29, Ex.PX, specimen seal impression sheet Ex.P3 as well as recovery memo Ex.P4, FIR number is duly mentioned. It is not explained by the prosecution as to how the FIR number was inserted in these documents, which had been prepared prior to sending the ruqqa. It is not the case of prosecution that FIR number has been inserted later on after getting the FIR number. This circumstance suggests that proceedings were not conducted at the spot in the manner as projected by the prosecution.

25. Still further, learned counsel for the appellant is right in pointing out that signature of the accused on consent memo Ex.P1 and Arrest Memo Ex.P5 are entirely different from the purported signatures of the accused on search memo Ex.P6. Investigating Officer of the case ASI Bhupinder Singh PW3 during his cross-examination was specifically confronted in this regard and he conceded that signatures of the accused on consent memo Ex.P1 and personal search memo Ex.P6 are different. Although he volunteered that accused put his initials on search memo Ex.P6 but admitted that no mention in this regard was made by him by making a note in the memo.

26. Not only this, PW3 has admitted that colour of his seal impression at Point A of the specimen seal impression sheet Ex.P3 and the colour of his seal impression Ex.PX on Form M-29 are different. He has not offered any explanation for the said difference of ink of seal in the documents. The said difference in the ink in the seal impression of the same witness on the two different documents assumes significance

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considering the facts that seal of Investigating Officer ASI Bhupinder Singh after use remained in possession of PW1 HC Bhagwant Singh, who was working in the same Police Station as a junior to PW3 ASI Bhupinder Singh. As has come in the testimony of PW3, the seal was returned to him next day by HC Bhagwant Singh. Meaning thereby, as the seal was in possession of a junior rank police official of the Investigating Officer, there is every possibility of putting reseal on Ex.PX, otherwise there appears to be no other justification of different inks used for putting seal impressions on two different documents prepared at the same time.

27. In view of the entire discussion as above, particularly non-compliance of the mandatory provisions of Section 50 of the NDPS Act, it is held that prosecution has not been able to prove its case beyond reasonable shadow of doubt. The prosecution case is full of doubts. The non-compliance of Section 50 of the NDPS Act has made the proceedings vitiated. Therefore, the impugned judgment of conviction and order of sentence, passed by Ld. Trial court, are hereby set aside. The appellant- accused is acquitted of the charges.

May 19, 2023
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(DEEPAK GUPTA)
JUDGE

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