



HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Single Bench : HON'BLE MRS. JUSTICE MEENAKSHI MADAN
RAI, JUDGE

Crl. A. No. 26 of 2014

APPELLANT - Shri Devendra Karki,
S/o Rudra Prasad Karki,
R/o Middle Gyalshing,
8th Mile, P.O.& P.S. Gyalshing,
West Sikkim.

Versus

RESPONDENT - State of Sikkim

Appeal u/S 374(2) of the Criminal Procedure Code,
1973

Appearance : Mr. Tsewang Namgyal, Advocate
for the Appellant

Mr. Santosh Kumar Chettri, Assistant
Public Prosecutor with Ms. Prathana
Ghataney, Advocate for the State-
Respondent.

J U D G M E N T

(13.05.2015)


1. By filing this Appeal, the Appellant seeks to assail the
Judgment and Order of Sentence dated 30.07.2014 passed by
the Learned Court of Special Judge (SADA), South Sikkim at



Namchi in S.T. (SADA) Case No. 04 of 2014. Vide the said Judgment, the Appellant was sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.2,00,000/- (Rupees Two lacs) only, under Section 9(d) of the SADA, 2006 with a default clause of imprisonment of 6(six) months. He was also sentenced to undergo simple imprisonment for a period of 6 (six) months with a fine of Rs.20,000/- (Rupees twenty thousand) only, under Rule 17(1) of the Sikkim Anti Drugs Rules, 2007 read with Section 14 of the Sikkim Anti Drugs Act, 2006 (hereinafter SADA 2006) with a default stipulation.

2. The facts as placed before the Learned Trial Court, briefly adumbrated are that the Appellant on 20.02.2014 went to Siliguri (West Bengal) from Geyzing, West Sikkim in vehicle bearing No. SK-02J-0957. At Siliguri, he purchased controlled substances comprising of various quantities of cough syrup of different brands, Spasmo-proxyvon capsules and Nitrosun (N-10) tablets and returned to Geyzing the same evening. At around 2200 hours, on reaching Melli Checkpost, he was detained by the Complainant (PW-2) on suspicion that he was carrying controlled substances and the matter was reported to the Station House Officer (SHO), Melli Police Station.

3. That, the option to be searched before a Magistrate, a Gazetted Officer or a Police Officer was afforded to the Appellant who opted to be searched by any police officer. Consequently, a



search was conducted by PW-6 (I.O.) in the presence of two independent witnesses on which the controlled substances described *supra* were recovered.

4. The controlled substances were seized vide Exhibit 3, samples separated, sealed and forwarded to the RFSL, Saramsa, East Sikkim for Chemical Analysis and Report. MO-II to MO-VII were identified by PW-6 to be the remaining controlled substances. Thereafter, on completion of investigation, Charge Sheet was submitted against the Appellant under Section 9(b)/14 of SADA, 2006 and on receipt of RFSL Report, supplementary Charge Sheet was also submitted.

5. The Learned Trial Court after hearing the Prosecution and the Defence, proceeded to frame charges against the Appellant under Section 9(d) of SADA 2006 and Rule 17(1) of the Sikkim Anti Drugs Rules, 2007 read with Section 14 of the SADA, 2006.

6. Prosecution evidence comprising of six witnesses was recorded and the Learned Trial Court on consideration of the evidence on record and placing reliance thereof found the Appellant guilty of the offences and convicted and sentenced him as reflected above. Hence, this Appeal.

7. The Learned Counsel for the Appellant raised the arguments that the Learned Trial Court erred in not appreciating the evidence of PW-2 and PW-3, besides concluding that the



evidence of PW-4 and PW-6 are convincing with regard to the place of seizure of the controlled substances. That the Learned Trial Court also did not consider the fact that although PW-2 and PW-3 had stated that they took the Appellant to the O.C. Melli Police Station, but none of the Prosecution witnesses have stated as to who brought the Appellant back from Melli Police Station to Melli Checkpost for search, seizure and arrest. That, consideration was not taken of the fact that the mandatory provisions of Section 24(3) and Section 30 of SADA 2006 were not complied with which ought to have resulted in the acquittal of the Appellant. It was further contended that the Learned Trial Court did not consider the fact that neither the seized articles were in huge quantity nor was the vehicle in which the accused travelling seized and hence the provisions of Section 9(d) of SADA, 2006 could not be attracted.

8. Learned Counsel for the Appellant, urging his prayer for acquittal before this Court has placed reliance on ***Yasihey Yobi & Anr. vs. The Department of Customs, Shillong : AIR 2014 1 SCALE 39***. He has drawn the attention of this Court to Para 10 of the decision wherein it was *inter alia* held that the position in law with regard to Section 50 of the NDPS Act has been settled by the Constitution Bench in the case of ***State of Punjab vs. Baldev Singh : AIR 1999 SC 2378*** and in ***Megh Singh vs. State of Punjab : (2003) 8 SCC 666***. That, application of



Section 50 (NDPS Act, 1985) is undoubtedly only in case of search of a person as contrasted to search of premises, vehicle or articles, but where the line of separation is thin and fine between search of a person and an artificial object the test of “inextricable connection” is to be applied and then conclusion is to be arrived at as to whether the search was that of a person or not. That, the Learned Trial Court failed to appreciate the ratio as laid down in ***Gurjant Singh @ Janta vs. State of Punjab : 2013 (13) SCALE 295.***

9. That, the Learned Trial Court also imposed excess penalty for the offences under the provisions of Law under which the Appellant was booked and passed the impugned Judgment without application of a judicious mind. Hence, the Judgment and Order of Sentence be set aside.

10. Mr. S.K. Chettri, Assistant Public Prosecutor for the State, *per contra* in his submissions contended that there was no illegality in the Judgment of the Learned Trial Court in convicting the Appellant or on the imposition of Sentence, therefore both call for no interference.

11. The question that arises for determination before this Court is whether the Learned Trial Court correctly appreciated the relevant provisions of law and evidence furnished by the



Prosecution and whether the sentence imposed on the Appellant is correct.

12. I have carefully considered the respective submissions put forth and given careful and anxious consideration to the same. I have also perused the impugned Judgment, the Order of Sentence, the evidence furnished by the Prosecution before the Learned Trial Court and all relevant documents.

13. Placing the Sections of NDPS Act, 1985 and SADA, 2006 in juxtaposition, it is evident that Section 21 of the SADA, 2006 which deals with the power of entry, search, seizure and arrest without warrant or authorization, is similar to the provisions of Section 42 of the NDPS Act. Similarly, the provisions of Section 24 of the SADA, 2006 pertaining to conditions under which search and seizure of persons can be conducted are on the same lines as Section 50 of the NDPS Act 1985_and Section 30 of the SADA 2006 is akin to Section 57 of the NDPS Act1985. The similarities are being highlighted to understand the legal perspective.

14. With regard to the application of Section 50 of the NDPS Act, 1985 (and as a corollary Section 24 of the SADA 2006), it would be worthwhile to refer to the Judgment of the Hon'ble Apex Court in ***State of Punjab vs. Balbir Singh : (1994) 3 SCC 299***. The Hon'ble Apex Court while discussing the relevance of



non compliance or failure to comply with the provisions of the NDPS Act, 1985 held in Paragraph 25 *inter alia* as follows:-

"25. The questions considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows:-

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act....."

15. The foregoing paragraph clarifies the position that where there is chance recovery the provision of Section 50 of the NDPS Act, 1985 would not apply. That, however, from the stage of such recovery, if made by a police officer who is not empowered to conduct search and seizure under the NDPS Act, 1985 he is required to inform the officer who is empowered to conduct such acts. The said officer is then required to proceed in accordance with the provisions of the NDPS Act. Should the chance recovery however be made by an empowered officer, then from that stage i.e. the stage of recovery, he should carry out his investigation in accordance with the other provisions of the NDPS Act.



16. In ***State of Punjab Vs. Baldev Singh : (1999) 6 SCC 172***, the Honb'le Apex Court discussed the ambit and scope of Section 50 of the NDPS Act and it was *inter alia* held that-

"11. Section 50 of the Act prescribes the conditions under which search of a person shall be conducted. Sub-section (1) provides that when the empowered officer is about to search any suspected person, he shall, *if the person to be searched so requires*, take him to the nearest gazetted officer or the Magistrate for the purpose. Under sub-section (2) it is laid down that if such request is made by the suspected person, the officer who is to take the search, may detain the suspect until he can be brought before such gazetted officer or the Magistrate. Sub-section (3) lays down that when the person to be searched is brought before such a gazetted officer or the Magistrate and such gazetted officer or the Magistrate finds that there are no reasonable grounds for search, he shall forthwith discharge the person to be searched, otherwise he shall direct that the search be made.

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted".

17. The Hon'ble Supreme Court in **Baldev Singh's** case (supra) discussed the decisions of the same Court in ***State of Punjab vs. Balbir Singh : (1994) 3 SCC 299***, ***Ali Mustaffa Abdul Rahman Moosa vs. State of Kerala : (1994) 6 SCC 569***, ***Saiyad Mohd. Saiyad Umar Saiyad vs. State of Gujarat : (1995) 3 SCC 610*** wherein it was laid down that failure to observe the safeguards while conducting search and seizure as provided by Section 50 would render the conviction and sentence of an accused illegal. It was pointed out that in ***Saiyad***

Mohd. (supra) a three Judge Bench upheld the view taken in **Balbir Singh's** case on the point of duty of the empowered officer to inform the suspect about his right to be searched before the gazetted officer or a Magistrate. In the relevant portion of the Judgment, it was held as follows:-

"8. We are unable to share the High Court's view that in cases under the NDPS Act it is the duty of the court to raise a presumption, when the officer concerned has not deposed that he had followed the procedure mandated by Section 50, that he had in fact done so. *When the officer concerned has not deposed that he had followed the procedure mandated by Section 50, the court is duty-bound to conclude that the accused had not had the benefit of the protection that Section 50 affords; that, therefore, his possession of articles which are illicit under the NDPS Act is not established; that the precondition for his having satisfactorily accounted for such possession has not been met; and to acquit the accused.*"

18. In the case of **State of H.P. vs. Pirthi Chand : (1996) 2 SCC 37** the Bench agreed with the view in **Balbir Singh's** case regarding the duty to inform the suspect of his right as emanating from Section 50 of the NDPS Act *inter alia* opining that -

"Compliance of the safeguards in Section 50 is mandatory obliging the officer concerned to inform the person to be searched of his right to demand that search could be conducted in the presence of a gazetted officer or a Magistrate. The possession of illicit articles has to be satisfactorily established before the court. The officer who conducts search must state in his evidence that he had informed the accused of his right to demand, while he is searched, in the presence of a gazetted officer or a Magistrate and that the accused had not chosen to so demand. If no evidence to that effect is given, the court must presume that the person searched was not informed of the protection the law gives him and must find that possession of illicit articles was not established. The presumption under Article 114 Illustration (e) of the Evidence Act, that the official duty was properly performed, therefore, does not apply."



19. In *State of Punjab vs Labh Singh : (1996) 5 SCC 520* it was held that the accused has been provided with a protection of being informed of his right to be searched in the presence of a gazetted officer or a Magistrate and failure to give an opportunity to the person concerned to avail of the protection would render the Prosecution case unsustainable.

20. In *State of Punjab vs. Jasbir Singh : (1996) 1 SCC 288* the relevant portion of the Judgment on the same point of law reads as follows –

".....Protection given by Section 50 is a valuable right to the offender and compliance thereof intended to be mandatory. In case the police officers had prior knowledge that illegal transport of the contraband is in movement and persons are in unlawful possession and intends to intercept it, conduct search and consequentially to seize the contraband, they are required to inform the offender that he has the right that the search will be conducted in the presence of a gazetted officer or a Magistrate....."

21. In *Ali Mustaffa Abdul Rahman Moosa* (supra) it was found that the appellant was not given the option of being searched in the presence of a gazetted officer or a Magistrate as envisaged under Section 50 of the NDPS Act. The Hon'ble Apex Court opined that to enable the person concerned to "require" that his search be carried out in the presence of a gazetted officer or a Magistrate, it is obligatory on the part of the empowered officer to inform the person concerned that he has the right to "require" his search to be conducted in the presence of a gazetted officer or a Magistrate.

22. The case of *Mohinder Kumar vs. State, Panaji, Goa : (1998) 8 SCC 655* may also be usefully referred to wherein the Court opined that in the facts and circumstances of the case when the investigating officer accidentally stumbled upon the

offending articles but was himself not the empowered officer, on coming to learn that the accused persons were in possession of illicit articles, from that stage onwards, he was under an obligation to proceed further in the matter only in accordance with the provisions of the Act.

23. Thus, from all of the above cited decisions, it is evident the ratiocination of **Balbir Singh's** case has not been departed from in various decisions of the Hon'ble Apex Court.

24. It would be relevant in this context to point that the Hon'ble Apex Court in **Baldev Singh's** case held as follows -

"28. This Court cannot overlook the context in which the NDPS Act operates and particularly the factor of widespread illiteracy among persons subject to investigation for drug offences. It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed. We are not able to find any reason as to why the empowered officer should shirk from affording a real opportunity to the suspect, by intimating to him that he has a right "that if he requires" to be searched in the presence of a gazetted officer or a Magistrate, he shall be searched only in that manner. As already observed the compliance with the procedural safeguards contained in Section 50 are intended to serve a dual purpose – to protect a person against false accusation and frivolous charges as also to lend creditability to the search and seizure conducted by the empowered officer. The argument that keeping in view the growing drug menace, an insistence on compliance with all the safeguards contained in Section 50 may result in more acquittals does not appeal to us. If the empowered officer fails to comply with the requirements of Section 50 and an order or acquittal is recorded on that ground, the prosecution must thank itself for its lapses. Indeed 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 unconscionable compromising the administration of justice. That cannot be permitted."

(emphasis supplied)



25. In the same case, the Court has drawn attention to the decision of the Supreme Court of the United States of America in ***Miranda vs. Arizona : 16 L Ed 2d 694 (1966)*** and extracted the relevant portion thereafter being relevant for ***Baldev Singh's*** case –

“The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. *The action of the State, however, must be 'right, just and fair.'*”
(emphasis supplied)

The Court therefore sought to emphasise that the rights of an accused are precious and the Investigating Agency is required to abide by the prescribed procedure of law.

26. In the same case, although no opinion was expressed as to whether the provisions of Section 50 of the NDPS Act, 1985 were mandatory or not but it was held that the provisions implicitly make it *imperative* and *obligatory* and cast a duty on the investigating officer (empowered officer) to ensure that search of the person (suspect) concerned is conducted in the manner prescribed by Section 50 of the NDPS Act, 1985, by intimating to the person concerned about the existence of his right, that if he so requires, he shall be searched before the gazetted officer or a Magistrate and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate would cause prejudice to the accused and render the recovery of the illicit article suspect

and vitiate the conviction and sentence of the accused. That, the omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable.

27. The above discussions have set the tone and tenor with regard to the provisions of Section 50 of the NDPS Act and the provisions of Section 24 of the SADA 2006 being almost identical, it goes without saying that the same principles of law would apply.

28. While dealing with the aspect of search of a person or his belongings, the Hon'ble Supreme Court in **(2004) 1 SCC 432 Rajendra And Another vs. State of M.P.** held that –

"13. 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, Baldev Singh case and Gurbax Singh v. State of Haryana). 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."

29. In **Namdi Francis Nwazor vs. Union of India & Another : (1998) 8 SCC 534** the Hon'ble Apex Court held that :-

"3. On a plain reading of sub-section (1) of Section 50, it is obvious that it applies to cases of search of any person and not search of any article in the sense that



the article is at a distant place from where the offender is actually searched. This position becomes clear when we refer to sub-section (4) of Section 50 which in terms says that no female shall be searched by anyone excepting a female. This would, in effect, mean that when the person of the accused is being searched, the law requires that if that person happens to be a female, the search shall be carried out only by a female. Such a restriction would not be necessary for searching the goods of a female which are lying at a distant place at the time of search. It is another matter that the said article is brought from the place where it is lying to the place where the search takes place but that cannot alter the position in law that the said article was not being carried by the accused on his or her person when apprehended. We must hasten to clarify that if that person is carrying a handbag or the like and the incriminating article is found therefrom, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act. However, when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that it was not found on the accused person. So, on the facts of this case, it is difficult to hold that Section 50 stood attracted and non-compliance with that provision was fatal to the prosecution case."

30. In the case of ***Yasihey Yobin*** (*supra*) the Hon'ble Apex Court relying on the decision of ***Namdi Francis Nwazor*** (*supra*) held that –


".....But in cases where the line of separation is thin and fine between search of a person and an artificial object, the test of inextricable connection is to be applied and then conclusion is to be reached as to whether the search was that of a person or not. The above test has been noticed in the case of ***Namdi Francis Nwazor vs Union of India and Anr., (1998) 8 SCC 534***, wherein it is held that if the search is of a bag which is inextricably connected with the person, Section 50 of the Act will apply, and if it is not so connected, the provisions will not apply. It is when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that the bag was not found on the accused person....."

31. Thus, these decisions lay down that provisions of Section 50 of the NDPS Act (and consequently of Section 24(3) of the SADA 2006) would apply only if there is an inextricable connection between the bag and the person, in other words the person has to be found carrying the bag containing the incriminating articles, if the provisions of Section 50 of NDPS Act are to be applied.

32. Learned Counsel for the State pointed out that since the search by the I.O. was of the bag of the Appellant and not his person, the provisions of Section 24 of the SADA, 2006 were not required to be complied with.

33. In rebuttal, the Learned Counsel for the Appellant has placed reliance to the decision of the Hon'ble Apex Court in ***Yasihey Yobin*** (*supra*) which has already been discussed herein above.

34. In the backdrop of all the above cases, reverting to the facts of the case at hand, it is evident that the vehicle in which the accused was travelling was detained for routine checking by PW-2. Thereafter, PW-2 lodged Exhibit-2 before the SHO, Melli Police Station. It is also evident that PW-2 had no prior information that the Appellant was in possession of controlled substances and it was merely on suspicion that the vehicle was




detained and search and seizure carried out. The evidence of PW-2 is to the effect that *"as he seemed suspicious we took him to the Officer-in-charge (O/C) of the Melli Police Station with the bag and handed him over to the O/C"*. PW-3 has supported the evidence of PW-2 to the extent that the Appellant had a bag with him and on suspicion they took him to the Officer-in-charge (O/C) of the Melli Police Station and handed him over to the O/C. PW-6 (I.O.) on her part has said that *"during my investigation, I proceeded to the Checkpost where accused had been apprehended along with his bag. When the bag was checked in the presence of witnesses Raju Tamang and Garja Man Rai (whose presence had been secured). I recovered three Corex cough syrup bottles (100 ml each), 1 R-COF cough syrup (100 ml) and one Lupicof Cough Syrup (100 ml) from his bag....."*.

35. Having said that, I deem it necessary to point out that once the I.O. as well as PW-2 & PW-3 suspected that the Appellant was in possession of controlled substances and PW-2 & PW-3 took the Appellant to the Melli Police Station admittedly some distance away from the Melli Checkpost, where the vehicle was detained, the I.O. ought to have given the Appellant the option as required under Section 24 of the SADA, 2006. In this context, Judgment of ***Gurjant Singh's*** case *supra* would be relevant, wherein it was held that –



".....The most crucial aspect of the case was that P.W.6 noticed three gunny bags lying in the tractor of the appellant and felt that some incriminating substance was kept in those gunny bags. P.W.6, therefore, took the view that before effecting search of the gunny bags, the necessity of affording an opportunity to the appellant to conduct the search in the presence of a Gazetted officer or a Magistrate was imperative. In other words, after noticing three gunny bags, P.W.6, as an investigating officer, felt the need to invoke the provisions of Section 50 and thereby provide an opportunity to the appellant for holding any search in the presence of a Gazetted officer or a Magistrate. When once P.W. 6 could assimilate the said legal requirement as stipulated under Section 50 of the NDPS Act, we fail to understand as to how principle No. 1 in paragraph 25 of the decision reported in Balbir Singh (supra) could be applied. Unfortunately, the trial Court failed to understand the said principle set out in Balbir Singh (supra) in the proper perspective while holding that neither Section 42 nor Section 50 was attracted to the facts of this case....."

36. The I.O. on cross examination had admitted that she had given an option to the accused though according to her, she was simply checking his bag. The option given to him, was to have his bag searched either by a Magistrate or a Gazetted officer. According to the I.O. *"He, however, told us that he was fine with me checking his bag. I may mention here that the search was conducted during odd time i.e. at around midnight"*. This clearly indicates that the I.O. had assimilated that she had to comply with the provision of Section 24 of the SADA 2006 similar to ***Gurjant Singh's*** case. The evidence however establishes that the option was given only by way of extending an empty formality with no intention of carrying out the letter of the law. PW-6, infact is not a gazetted officer herself. Once she was aware




that the option had to be extended to the appellant, she ought to have taken steps towards fulfilling the same, which as apparent, she failed to. The late hours of the search cannot be said to be a mitigating circumstance.

37. The argument that the search was of the bag and not of the person therefore Section 24 of the SADA 2006 does not apply, does not hold water in view of the principle of inextricable connection laid down in **Rajendra Prasad's** and **Nwazor's** case. The evidence of PW-2, PW-3 and PW-4 throw light on the fact that the accused was in possession of a bag and was carrying it. Hence, the provisions of Section 24 of the SADA 2006 clearly apply to the facts of the case.

38. The Learned Trial Court has thus erred in opining that "Since it was the bag of the accused which was being checked, PW-6 was not mandated to give any such option to the accused."

39. The ratio and import of the decision of the Hon'ble Apex Court in **Gurjant Singh's** case appears not to have been correctly appreciated by the Learned Trial Court, since it appears to be under the impression that the conveyance (tractor) of the accused was being searched, when the Judgment clearly lays down that the tractor trolley was stopped and PW-6 informed the appellant that he intended to search the gunny



bags, as he suspected some incriminating article in the gunny bags. Contrary to what has been held by the Learned Trial Court, the circumstances of that case apply to the circumstances in the instant case and the relevant paragraph has already been extracted hereinabove for perusal. The Learned Defense Counsel relying in ***Gurjant Singh's*** case has sought to point out before the Learned Trial Court that after the I.O. became aware that the option of being searched before the gazetted officer or a Magistrate was to be extended to the accused, instead of complying with it she failed to do so, as is in ***Gurjant Singh's*** case.

40. With regard to non-compliance to Section 30 of SADA 2006, as agitated by the Learned Counsel for the Appellant, the Learned Trial Court in the impugned Judgment has held that Section 30 of the SADA 2006 which is akin to Section 57 of the NDPS Act cannot be regarded as mandatory as held by the Hon'ble Apex Court in ***Sajan Abraham, Appellant vs. State of Kerala (2006)***. In the above matter, relying on the Judgment of Balbir Singh's case it was held that the provisions of Section 52 & 57, which deal with the steps to be taken by the officers after making arrest or seizure under Section 41 to 44 or by themselves are not mandatory. Hence, on this account there is no infirmity in the impugned Judgment.

41. The arguments put forth by Learned Counsel for the Appellant with regard to non-compliance of the provisions of Section 9(d) of the SADA 2006, as the vehicle was not seized appears to be untenable. The spirit behind the provision would be to prevent future transportation of controlled substances in the vehicle belonging to the accused but when the accused is not the owner of the vehicle neither has he hired the same by reserving it, seizing the vehicle would bear no fruit. It was a public transportation and infact non-seizure of the vehicle would probably prejudice the Prosecution case and not the accused. Having said that, there is no necessity of entering into a protracted discussion on this point, in view of the fact that the provisions of Section 24 of SADA 2006 have not been complied with as already discussed.

42. Dealing with the anomaly regarding place of search and seizure, PW-2 and PW-3 have stated that they took him to the Officer-in-Charge, Melli Police Station and handed him over to the O.C. there, but PW-6 (I.O.) has said that she proceeded to Melli Checkpost where the accused had been apprehended and carried out the search and seizure there. Thus, there is evidently a missing link in the Prosecution case with regard to the accused having been taken to the Melli Police Station by PW-2 & PW-3 with no evidence whatsoever to suggest as to who had brought him back to the Melli Checkpost. Paragraph 21 of the

impugned Judgment skirts the issue and there is no reasonable explanation as to how the Learned Trial Court concluded that the search and seizure was done at Melli Checkpost.

43. Hence, in view of the discussions hereinabove, I am of the considered opinion that the Appellant is entitled to and is accordingly acquitted of the charges under which he was booked.

44. Appellant be set at liberty forthwith.

45. Fine, if any, deposited by the Appellant in terms of the Order of Sentence be returned to him.

46. Records of the Learned Trial Court be remitted.

Sd/-
(Meenakshi Madan Rai)
Judge
13.05.2015

Approved for reporting : Yes/~~No~~
Internet : Yes/~~No~~

At/Bp