

A NARCOTICS CENTRAL BUREAU
v.
SUKH DEV RAJ SODHI
(Criminal Appeal No. 1079 of 2002)

MAY 20, 2011

[ASOK KUMAR GANGULY AND DEEPAK VERMA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985: s.50 – Requirement under – Compliance of – Held: s.50 is not complied with by merely informing the accused of his option to be searched either in the presence of a Gazetted officer or before a Magistrate – Requirement continues even after that and it is required that the accused person is actually brought before the Gazetted officer or the Magistrate and in order to impart authenticity, transparency and creditworthiness to the entire proceedings, an endeavour should be made by the prosecuting agency to produce the suspect before the nearest Magistrate.

The question which arose for consideration in the instant appeal was whether by merely giving the option to the accused, the appellant-prosecuting agency had complied with the requirement under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and, therefore, the High Court erred in holding that the mandatory provision of Section 50 of the Act was not complied with, and violation of the said provision vitiated the conviction.

Dismissing the appeal, the Court

G HELD: There is no reason to interfere with the finding of the High Court. The requirement under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is not complied with by merely informing the

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accused of his option to be searched either in the presence of a gazetted officer or before a Magistrate. The requirement continues even after that and it is required that the accused person is actually brought before the gazetted officer or the Magistrate and in order to impart authenticity, transparency and creditworthiness to the entire proceedings, an endeavour should be made by the prosecuting agency to produce the suspect before the nearest Magistrate. In view of that in the instant case, the obligation under Section 50 of the Act was not discharged statutorily by the appellant. [Paras 6 and 7]

Vijaysinh Chandubha Jadeja v. State of Gujarat (2011)
1 SCC 609 – followed.

Case Law Reference:

(2011) 1 SCC 609 Followed Paras 5, 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1079 of 2002.

From the Judgment & Order dated 11.1.2002 of the High Court of Delhi at New Delhi in Crl. Appeal No. 91 of 1997.

P.K. Dey, Sadhana Sandhu, Rashmi, S.N. Terdal, Sushma Suri for the Appellant.

Khwairakpam Nobin Singh for the Respondent.

The Judgment of the Court was delivered by

GANGULY, J. 1. Heard learned counsel for the appellant. Despite notice, none appears for the respondent.

2. This is an appeal by the Narcotics Central Bureau impugning judgment and order dated 11.01.2002 passed by the High Court whereby the High Court, on consideration of the facts and the legal position of the case, was pleased to hold that the mandatory provision of Section 50 of the Narcotic Drugs

A and Psychotropic Substances Act, 1985 (hereinafter referred
to as 'NDPS Act') has not been complied with and the violation
of the said Act has vitiated the conviction and on that ground,
the High Court was pleased to set aside the conviction and did
not examine any other fact of the case. In this appeal also, we
B do not go into other factual aspects.

3. It is not in dispute that pursuant to the High Court's order,
the respondent is set at liberty.

4. Now, the learned counsel for the appellant submits that
C in the instant case, from the search notice (at Annexure P-1), it
will appear that the requirement of Section 50 of the NDPS Act
has been complied with. From the said notice, it appears that
the accused was informed that he has the option of being
searched either in the presence of gazetted officer or
D Magistrate and it appears that the accused wanted to be
searched in the presence of gazetted officer. The learned
counsel for the appellant submits that by giving the option to
the accused, the appellant has complied with the requirement
under Section 50 of the NDPS Act.

E 5. The obligation of the authorities under Section 50 of the
NDPS Act has come up for consideration before this Court in
several cases and recently, the Constitution Bench of this Court
in the case of *Vijaysinh Chandubha Jadeja v. State of Gujarat*
[(2011) 1 SCC 609] has settled this controversy. The
F Constitution Bench has held that requirement of Section 50 of
the NDPS Act is a mandatory requirement and the provision
of Section 50 must be very strictly construed.

6. From the perusal of the conclusion arrived at by this
G Court in *Vijaysinh Chandubha Jadeja's* case, it appears that
the requirement under Section 50 of the NDPS Act is not
complied with by merely informing the accused of his option to
be searched either in the presence of a gazetted officer or
before a Magistrate. The requirement continues even after that
H and it is required that the accused person is actually brought

before the gazetted officer or the Magistrate and in Para 32, A
the Constitution Bench made it clear that in order to impart
authenticity, transparency and creditworthiness to the entire
proceedings, an endeavour should be made by the prosecuting
agency to produce the suspect before the nearest Magistrate.

7. That being the law laid down by the Constitution Bench B
of this Court on interpretation of Section 50 of the NDPS Act,
we do not think that the obligation under Section 50 of the Act
has been discharged statutorily by the appellant in this case.
We, therefore, find no reason to interfere with the finding made C
by the High court. The appeal is, accordingly, dismissed.

D.G.

Appeal dismissed.