

SUPREME COURT OF INDIA

Babu

Vs.

State of Kerala

(G Nanavati and D Wadhwa JJ.)

26.10.1999

ORDER

1. This appeal deserves to be allowed on the ground that there was non-compliance of the requirement of Section 50 of the N.D.P.S. Act.
2. Before recovering a packet containing brown sugar weighting 4.380 grams from the person of the appellant, he was admittedly not informed by the police officer that he had a right to be searched in presence of a Magistrate or a Gazetted Officer. Though this point was not taken up before the High Court, it being a pure point of law, we permitted the appellant to raise this point before us in view of the judgment of this Court in *The State of Punjab v. Baldev Singh* - . It is the obligation of the Police Officer to inform the appellant of his right to be searched in presence of a Gazetted Officer or a Magistrate, if the person of the accused is to be searched. Admittedly, in this case brown sugar was recovered from the person of the accused and not from any other place. He was, therefore, entitled to be informed about his right. Since that was not done, as rightly conceded, this is clearly a case of non-compliance of the requirement of Section 50 of the NDPS Act. This appeal is, therefore, allowed, the impugned judgment and the order of conviction and sentence are set aside and the appellant stands acquitted of the charge leveled against him.