

SUPREME COURT OF INDIA

Man Bahadur

Vs.

State of H.P.

CrI.A.No.1513 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

23.09.2008

ORDER

1. Delay condoned.

2. Leave granted.

“(1) One of the questions which arises for consideration in this appeal is as to whether Shri Lal Chand No. 8 I.O. P.P.Pandoh(P.W.10) was bound to make the accused-appellant aware that he had also a right to be searched before a Magistrate or a gazetted Officer.

(2) In *State of Punjab Vs. Baldev Singh*¹, a Constitution Bench of this Court has clearly held that the accused has a right to be made aware thereof. Having regard to the Miranda clause as enunciated by the Supreme Court of the United States of America in *Miranda Vs. Arizona*-384 US 436, the Constitution Bench held that, although, such communication itself may not necessarily be made in writing but as far as possible such communication should be made in the presence of some independent and respectable persons witnessing the arrest and search.”

3. It was opined:

“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 Magistrate would cause prejudice to an accused.”

(3) A three-Judge Bench of this Court in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat*² noticed the aforementioned dicta laid by the Constitution Bench in Baldev Singh(Supra) and in no uncertain terms opined that the accused must be told of his right to be searched before a gazetted officer or a Magistrate.

(4) The Bench, however, was of the opinion that some more clarification is necessary as to whether such communication of the right of the accused could be taken in evidence by way of oral evidence of the officer concerned.

(5) In this case it is accepted at the Bar that the search memo or any other document do not show that the appellant was made aware of his right to be searched before a gazetted officer or a Magistrate.

(6) From the deposition of P.W.10-I.O.P.P. Pandoh, it appears that he had merely given an option to the appellant to be searched either by himself or in presence of a Magistrate or a gazetted Officer.

(7) No evidence has been adduced to show that the appellant was communicated of his right either to be searched in presence of a Magistrate or a gazetted officer on the one hand and by an empowered officer on the other.

(8) Recently, this Court in *Noor Aga Vs. State of Punjab and Anr.*³, categorically, held that as the provisions contained in the N.D.P.S.Act are penal in nature, all requirements laid down therein must be complied with strictly, stating:

"149. Section 50 of the Act provides for an option to be given. This Court in Baldev Singh(supra) quoted with approval the decision of the Supreme Court of *United States in Miranda Vs. Arizona*⁴ in the following terms:

"The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus reipublicae suprema lex*(safety of the State is the 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.

150. Justness and fairness of a trial is also implicit in Article 21 of the Constitution.

151. A fair trial is again a human right. Every action of the authorities under the Act must be construed having regard to the provisions of the Act as also the right of an accused to have a fair trial.

152. The courts, in order to do justice between the parties, must examine the materials brought on record in each case on its own merits. Marshalling and appreciation of evidence must be done strictly in accordance with the well known legal principles

governing the same; wherefor the provisions of the Code of Criminal Procedure and Evidence Act must be followed.

153. Appreciation of evidence must be done on the basis of materials on record and not on the basis of some reports which have nothing to do with the occurrence in question.

154. Article 12 of the Universal Declaration of Human Rights provides for the Right to a fair trial. Such rights are enshrined in our Constitutional Scheme being Article 21 of the Constitution of India. If an accused has a right of fair trial, his case must be examined keeping in view the ordinary law of the land.

155. It is one thing to say that even applying the well known principles of law, they are found to be guilty of commission of offences for which they are charged but it is another thing to say that although they cannot be held guilty on the basis of the materials on record, they must suffer punishment in view of the past experience of otherwise.”

(8) In the instant case, there has been even no substantial compliance of Section 50 of the N.D.P.S. Act.

(9) For the reasons aforementioned, the impugned judgment of conviction and sentence cannot be upheld. It is set aside accordingly. The appeal is allowed.

(10) Appellant is in custody. He shall be released forthwith unless required in connection with some other case.

¹(1999) 6 SCC 172

²(2007) 1 SCC 433

³2008(9) SCALE 681

⁴{(1966) 384 US 436}