

SUPREME COURT OF INDIA

Jamiruddin Ahmed

Vs.

State of West Bengal

CrI.A.No.1535 of 2008

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

26.03.2009

ORDER

1. The only contention raised in this appeal is that although admittedly a raid was conducted in the house of the appellant in a remote village at midnight, no reason as is required in terms of the proviso appended to Section 42(1) of the *Narcotic Drugs and Psychotropic Substances Act, 1985* ("NDPS Act) had been recorded.

2. Respondent - State of West Bengal has filed a counter affidavit, stating:

“(i) That there is no challenge by the Petitioner regarding compliance of section 50 of the N.D.P.S. Act;

(ii) That the only point that has been argued is that non-compliance of the provision of Section 42 of the N.D.P.S. Act;

(iii) That in a peculiar situation the search was conducted where the higher officials did not feel it proper to obtain a prior authorisation, lest the entire purpose of the search and seizure would be rendered futile in such a situation;

(iv) That the raiding party was accompanied by Senior Officials in the rank of Addl. S.P. and we think that there was due compliance of Section 42 of the N.D.P.S. Act.”

3. Before us, all the relevant documents have been produced by the State.

4. However, we do not find anything in the record to show that the reasons had been recorded by the raiding party in terms of the proviso to Section 42(1) of the NDPS Act.

5. The provisions of the NDPS Act provide for stringent punishment. The safeguards contained therein are, therefore, required to be scrupulously complied with. The statute, if for such compliance is directory in nature, states so in clear terms.

6. The raiding party had sufficient time to record reasons. Why the requirement contained in the proviso appended to Section 42 of the NDPS Act could not be complied with, has not been explained. The search of a place without recording such reasons may violate somebody's right to privacy.

7. When a power of entry, search, seizure and arrest without warrant or authorisation is conferred upon the authority specified in the statute, the conditions precedent laid down therefor require compliance. An empowered officer in terms of the proviso is required to record the grounds of his belief that a search warrant or authorisation cannot be obtained without affording opportunity for concealment of evidence or facility for the escape of an offender. As he had sufficient time at his disposal, there was no reason as to why the same had not been complied with.

8. We are, therefore, of the opinion that the search being wholly illegal, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The appellant, who is in jail, is directed to be set at liberty forthwith unless required in connection with any other case.