

SUPREME COURT OF INDIA

Narcotics Central Bureau

Vs.

Sukh Dev Raj Sodhi

CrI.A.No.1079 of 2002

(Asok Kumar Ganguly and Deepak Verma,JJ.,)

20.05.2011

JUDGMENT

Asok Kumar 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 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 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. Now, the learned counsel for the appellant submits that 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 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.
4. 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 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. From the perusal of the conclusion arrived at by this 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 and it is required that the accused person is actually brought before the gazetted officer or the Magistrate and in Para 32, 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.

5. That being the law laid down by the Constitution Bench 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 by the High court. The appeal is, accordingly, dismissed.