

**SUPREME COURT OF INDIA**

Ashok Kumar Sharma

Vs.

State of Rajasthan

Crl.A.No.817 of 2008

(K.S.Radhakrishnan and Dipak Misra JJ.)

09.01.2013

**JUDGMENT**

**K.S. RADHAKRISHNAN, J.**

1. The short question that has come up for consideration in this appeal is whether the empowered officer, acting under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘the NDPS Act’) is legally obliged to apprise the accused of his right to be searched before a Gazetted Officer or a Magistrate and whether such a procedure is mandatory under the provisions of the NDPS Act.

2. PW1, Additional Superintendent of Police (Crimes), Jaipur City, Jaipur got secret information that on 25.2.2001 one Ashok Kumar, the appellant herein would be selling smack to a person near Nandipur under Bridge. After completing the formalities PW1 along with two independent witnesses reached near Nandpuri under Bridge. At about 4.55 P.M. a person came on a scooter, who was stopped by the police force and was questioned. Exhibit P-3, notice was given by PW1 under Section 50 of the NDPS Act to the appellant to get himself searched either before a Magistrate or a Gazetted officer. The appellant gave his consent in writing on Ex.P-3 itself stating that he has full confidence in him and agreed for search. Upon search two packets had been recovered from the right and left pockets of the pant of the appellant. The contra-banned was weighed by PW7, goldsmith and the total weight of the packets was 344 gms. From each packet two samples of 10 gms. were taken and sealed and remaining packets were sealed separately. The appellant was then arrested and the scooter was seized.

3. PW1 gave a written report to the Station House Officer, Malviya Nagar Police Station, Jaipur to register FIR No.112/2001 under Section 8 and 21 of the NDPS Act. Ex-P-19, report of the Public Analyst of the Rajasthan State Forensic Laboratory, Jaipur showed that the samples contained the presence of diacetylmorphine (Heroin). On completion of the investigation, challan was filed against the accused. Learned Special Judge, NDPS framed the charge under Sections 8 and 21 of the NDPS Act. Before the Special Judge, prosecution examined 14 witnesses and produced Ex. P1 to P19. The accused-appellant in his statement under Section 313 of the Code of Criminal Procedure stated that false case had been foisted against him.

4. The Sessions Court after having found guilty, convicted the appellant and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lakh and, in default, to further under go simple imprisonment for one year. The appellant preferred Criminal Appeal No.1157 of 2003 before the High Court under Section 374 of the Code of Criminal Procedure. The appeal was, however, rejected by the High Court on 9.2.2007 against which this appeal has been preferred by way of special leave.

5. Ms. C.K. Sucharita, learned amicus curiae appearing for the appellant- accused submitted that the High Court has committed a grave error in not appreciating the fact that the conviction was vitiated by the non- compliance of the procedure laid down in Section 50 of the NDPS Act. Learned counsel took us to the evidence of PW1 and submitted that PW1 had not disclosed the fact that the accused had a right to be searched before a Gazetted Officer or a Magistrate, if so required by him. According to the learned counsel non-compliance of that procedure vitiated the entire proceedings initiated against the appellant. In support of her contention reliance was placed on a Judgment of this court in *Vijaysingh Chandubha Jadeja v. State of Gujart* (2011) 1 SCC 609.

6. Mr. Amit Lubhaya, learned counsel appearing for the State of Rajasthan, on the other hand, contended that the Sessions Court has rightly convicted the appellant and there has been a substantial compliance of the procedure laid down under Section 50 of the -NDPS Act. Learned counsel further submitted that the High Court in a well considered order has affirmed the conviction as well as the sentence imposed by the Special Judge.

7. We are in this case concerned only with the question whether PW1, the officer who had conducted the search on the person of the appellant had followed the procedure laid down under Section 50 of the NDPS Act. On this question, there

were conflicts of views by different Benches of this Court and the matter was referred to a five Judge Bench. This Court in Vijaysingh Chandubha Jadeja (supra) answered the question, stating that it is imperative on the part of the officer to apprise the person intended to be searched of his right under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate. This Court also held that it is mandatory on the part of the authorized officer to make the accused aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this mandatory provision requires strict compliance. The suspect may or may not choose to exercise the right provided to him under the said provision, but so far as the officer concerned, an obligation is cast on him under Section 50 of the NDPS Act to apprise the person of his right to be searched before a Gazetted Officer or a Magistrate. The question, as to whether this procedure has been complied with or not, in this case the deposition of PW1 assumes importance, which reads as follows:

“He was apprised while telling the reason of being searched that he could be searched before any Magistrate or any Gazetted Officer if he wished. He gave his consent in written and said that I have faith on you, you can search me. Fard regarding apprising and consent is Ex.P- 3 on which I put my signature from A to B and the accused put his signature from C to D. E to F is the endorsement of the consent of the accused and G to H is signature, which has been written by the accused.”

8. The above statement of PW1 would clearly indicate that he had only informed the accused that he could be searched before any Magistrate or a Gazetted Officer if he so wished. The fact that the accused person has a right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate was not made known to him. We are of the view that there is an obligation on the part of the empowered officer to inform the accused or the suspect of the existence of such a right to be searched before a Gazetted Officer or a Magistrate, if so required by him. Only if the suspect does not choose to exercise the right in spite of apprising him of his right, the empowered officer could conduct the search on the body of the person.

9. We may, in this connection, also examine the general maxim “ignorantia juris non excusat” and whether in such a situation the accused could take a defence that he was unaware of the procedure laid down in Section 50 of the NDPS Act. Ignorance does not normally afford any defence under the criminal law, since a person is presumed to know the law. Indisputedly ignorance of law often in reality exists, though as a general proposition, it is true, that knowledge of law must be

imputed to every person. But it must be too much to impute knowledge in certain situations, for example, we cannot expect a rustic villager, totally illiterate, a poor man on the street, to be aware of the various law laid down in this country i.e. leave aside the NDPS Act. We notice this fact is also within the knowledge of the legislature, possibly for that reason the legislature in its wisdom imposed an obligation on the authorized officer acting under Section 50 of the NDPS Act to inform the suspect of his right under Section 50 to be searched in the presence of a Gazetted Officer or a Magistrate warranting strict compliance of that procedure.

10. We are of the view that non-compliance of this mandatory procedure has vitiated the entire proceedings initiated against the accused- appellant. We are of the view that the Special Court as well as the High Court has committed an error in not properly appreciating the scope of Section 50 of the NDPS Act. The appeal is, therefore, allowed. Consequently the conviction and sentence imposed by the Sessions Court and affirmed by the High Court are set aside. The accused-appellant, who is in jail, to be released forthwith, if not required in connection with any other case.