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STATE OF PUNJAB

v.

JASBIR SINGH

NOVEMBER 28, 1995

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[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

*Narcotic Drugs and Psychotropic Substances Act, 1985 :*

C *Section 50—Non-compliance with—Acquittal order—Validity of—  
Evidence—Collected in violation of statutory provisions—Effect of.*

D This appeal has been preferred by the State against acquittal of the respondents who were tried under the Narcotic Drugs and Psychotropic Substances Act, 1985. Having regard to the totality of the circumstances, the Additional Sessions Judge did not accept the evidence of the police officers on the ground that it was open to them at the time of the search to take in writing from the accused that they had no objection to the search being conducted and that they were informed of their right and they waived the search in the present of a gazetted officer.

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Dismissing the State's appeal, this Court

F HELD : 1. The acquittal order is confirmed for the reason that the mandatory requirements of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 have not been complied with. Protection given by section 50 is a valuable right to the offender and compliance thereof intended to be mandatory. In case the Police Officer had prior knowledge that illegal transport of the contraband is in movement and persons are in unlawful possession and intends to intercept it, conducts search and consequentially seizes the contraband, he is required to inform the offenders that they have the right to be searched in the presence of a gazetted officer or a Magistrate. Thereafter on their agreeing to be searched by the Police Officer, the search and seizure of the contraband from their unlawful possession would become legal and valid. The evidence collected during investigation in breach of mandatory requirement does not become inadmissible. Each case is to be considered on its own back drop. [743-E-H]

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2. In this case the Additional Sessions Judge was not inclined to

accept the prosecution case in the absence of anything in writing. Therefore, the view expressed by him cannot be said to be unwarranted or unjustified. [744-B] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1594 of 1995.

From the Judgment and Order dated 21.5.91 of the Punjab & Haryana High Court in Crl. M. No. 5091 of 1991. B

Ms. Amita Gupta and R.S. Suri for the Appellant.

Ujjagar Singh, Satish Vig, D. Verma and Gulshan Rai for the Respondents. C

The following order of the Court was delivered :

Leave granted.

Having considered the evidence we find it difficult to set aside the order of acquittal recorded by the Additional Sessions Judge. Though the offence involved is of a considerable magnitude of 70 bags containing 34 Kgs. of poppy husk, each without any permit/licence, this Court is constrained to confirm the acquittal for the reasons that the mandatory requirements of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 has not been complied with. Protection given by s.50 is a valuable right to the offender and compliance thereof intended to be mandatory. In case the Police Officer had prior knowledge that illegal transport of the contraband is in movement and persons are in unlawful possession and intends to intercept it, conduct search and consequentially to seize the contraband, they required to inform the offender that he has the right that the search will be conducted in the presence of a gazetted officer or a Magistrate. Thereafter on their agreeing to be searched by the Police officers, the search and seizure of the contraband from their unlawful possession would become legal and valid. However, the evidence collected in breach of mandatory requirement does not become inadmissible. It is settled law that evidence collected during investigation in violation of the statutory provisions does not become inadmissible and the trial on the basis thereof does not get vitiated. Each case is to be considered on its own back drop. The learned Additional Sessions Judge did not accept the evidence of the police officers on the ground that it was open to them, at the time D  
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A of the search, to take in writing from the accused that they had no objection to the search being conducted and that they were informed of their right and they waived the search in the presence of a gazetted officer. It is a matter of appreciation of evidence and that having considered the totality of the facts and circumstances, the learned Additional Sessions Judge was not inclined to accept the prosecution case in the absence of anything in writing. The view expressed by the Additional Sessions Judge cannot be said to be unwarranted or unjustified. Under the circumstances, we are constrained to confirm the order of acquittal though the High Court unfortunately did not deal with the case properly.

C The appeal is accordingly dismissed.

T.N.A.

Appeal dismissed.