

STATE OF U.P.

v.

SUBHASH KUMAR SINGH TOMAR  
(Criminal Appeal No. 237 of 2004)

APRIL 15, 2009

[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA  
AND P. SATHASIVAM, JJ.]

*Narcotic Drugs and Psychotropic Substance Act, 1985 – s. 50 – Recovery of contraband on personal search of suspect – Acquittal by High Court on the ground of non-compliance of s.50 – Interference with – Held: Not called for – Accused has right to be informed that he has right to require his search to be conducted in presence of Gazetted Officer or Magistrate – Failure to do so would cause prejudice to accused and render the search illegal.*

In this appeal, order of High Court, acquitting the appellant for non-compliance with the requirement of s.50 of the Narcotic Drugs and Psychotropic Substance Act, 1985 is under challenge.

Dismissing the appeal, the Court

**HELD:** It is an obligation of the Empowered Officer and his duty before conducting the search of the person of a suspect on the basis of prior information to inform the suspect that he has the right to require his search to be conducted in the presence of a Gazetted Officer or a Magistrate. The failure to so inform the suspect of his right would render the search illegal because the suspect would not be able to avail of the protection which is in compliance with section 50 of the Narcotic Drugs and Psychotropic Substance Act. Similarly, if the person concerned required on being so informed by the

- A **Empowered Officer or otherwise i.e. that search be conducted in the presence of a Gazetted Officer or Magistrate the Empowered Officer is obliged to do so and failure on his part to do so would cause prejudice to the accused and also render the search illegal and the conviction and sentence to the accused based solely on recovery may treat the search as bad. Thus, the judgment of the High Court does not suffer from any infirmity to warrant interference. [Paras 2 and 3] [1114-C-F]**
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- C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 237 of 2004.**

From the Judgment & Order dated 04.03.2003 of the High Court of Judicature at Allahabad in Criminal Appeal No. 93/1993.

- D **Sahdev Singh, Mohd. Fuzail Khan and Chandra Prakash Pandey for the Appellants.**

**Vivek Vishnoi, Mukesh Verma and Rameshwar Prasad Goyal for the Respondents.**

- E **The Judgment of the Court was delivered by**

- F **DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the appeal filed by the respondent. On the accusation of offence committed punishable under Section 20(b) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'Act') the accused faced trial. Learned III Additional District & Sessions Judge, Kanpur, found the accused guilty and sentenced him to 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- with default stipulation. The case of the prosecution is that on 3.1.1991, PWs. 1 and 2 checked the accused and his personal search resulted in recovery and seizure of 500 grams of charas. Two samples of 25 gms. each were separately taken and sent for**
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chemical analysis. On analysis the contraband was found to be charas by the Public Analyst. Before the High Court the only stand taken by the accused was that there was non-compliance with the requirement of Section 50 of the Act. The High Court found on going through the evidence of PWs 1 and 2 that there is nothing to suggest that the requirement of Section 50 was complied with. Accordingly, the judgment of acquittal was passed. In support of the appeal, learned counsel for the appellant-State submitted that there is nothing to doubt the statement of public witnesses PWs. 1 and 2 that they had seized the contraband articles from the accused persons.

2. It is an obligation of the Empowered Officer and his duty before conducting the search of the person of a suspect on the basis of prior information to inform the suspect that he has the right to require his search to be conducted in the presence of a Gazetted Officer or a Magistrate. The failure to so inform the suspect of his right would render the search illegal because the suspect would not be able to avail of the protection which is in compliance with Section 50. Similarly, if the person concerned required on being so informed by the Empowered Officer or otherwise i.e. that search be conducted in the presence of a Gazetted Officer or Magistrate the Empowered Officer is obliged to do so and failure on his part to do so would cause prejudice to the accused and also render the search illegal and the conviction and sentence to the accused based solely on recovery may treat the search as bad.

3. Above being the position in law, the judgment of the High Court does not suffer from any infirmity to warrant interference.

4. The appeal fails and is dismissed.

N.J.

Appeal dismissed.