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ASHOK KUMAR SHARMA  
v.  
STATE OF RAJASTHAN  
(Criminal Appeal No. 817 of 2008)

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JANUARY 9, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

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*NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES ACT, 1985:*

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*s.50 – Search of person of suspect / accused – Procedure – Nature of – Conviction of accused u/ss.8 and 21 – Held: It is mandatory on the part of the authorized officer to make the accused aware 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 – In the instant case, accused had been only informed that he could be searched before a Magistrate or a Gazetted Officer, if he so wished – Thus, there being non-compliance of the mandatory provision, conviction and sentence awarded by courts below, set aside – Maxim “ignorantia juris non excusat”.*

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**The appellant was convicted and sentenced to 10 years RI and a fine of Rs. 1 lakh u/ss. 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as he was stated to have been found in possession of two packets of smack of 344 gm. each. His appeal was dismissed by the High Court.**

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**In the instant appeal it was contended for the accused-appellant that his conviction was vitiated for non-compliance of the procedure laid down u/s. 50 of the NDPS Act, as he was not informed by the empowered officer of his right to be searched before a Magistrate or a Gazetted Officer.**

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Allowing the appeal, the Court

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**HELD: 1.1.** This Court in *Vijaysingh Chandubha Jadeja's* case has held that u/s. 50 of the NDPS Act, it is mandatory on the part of the authorized officer to make the accused/suspect 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. Thus, an obligation is cast on the officer concerned u/s. 50 of the NDPS Act to apprise the person of his right to be searched before a Gazetted Officer or a Magistrate. Therefore, the general maxim "*ignorantia juris non excusat*" has no application. [Para 7 and 9] [240-D-E; 241-E-H; 242-A]

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*Vijaysingh Chandubha Jadeja v. State of Gujarat* 2010 (13) SCR 255 = (2011) 1 SCC 609 – relied on.

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1.2. In the instant case, the statement of PW1 would clearly indicate that he had only informed the accused that he could be searched before a Magistrate or a Gazetted Officer if he so wished. The fact that the accused person has a right u/s. 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate was not made known to him. This Court, therefore, is of the view that non-compliance of the mandatory procedure prescribed u/s. 50 has vitiated the entire proceedings initiated against the accused-appellant. The Special Court as well as the High Court, have committed an error in not properly appreciating the scope of s. 50 of the NDPS Act. Consequently, the conviction and sentence imposed by the courts below is set aside. [Para 8, 10] [241-B-C; 242-B-C]

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**Case Law Reference:**

2010 (13) SCR 255, relied on, Para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 817 of 2008.

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A From the Judgment & Order dated 09.02.2007 of the High Court of Rajasthan, Jaipur Bench in SB CrI. A.No. 1157 of 2003.

C.K. Sucharita for the Appellant.

B Amit Lubhaya, Pragati Neekhra for the Respondent.

The Judgment of the Court was delivered by

C **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.

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H 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.

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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 Gujarat* (2011) 1 SCC 609.

A 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  
 B 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  
 C 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,  
 D 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  
 E 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,  
 F 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  
 G 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  
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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

A in the presence of a Gazetted Officer or a Magistrate warranting strict compliance of that procedure.

B 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.

C R.P.

Appeal allowed.