

RAM SWAROOP

v.

STATE (GOVT. NCT) OF DELHI
(Criminal Appeal No. 1327 of 2010)

MAY 21, 2013

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 – Search and seizure – Reliance placed only on the testimony of official witnesses / police officials – Non-examination of independent witnesses – Effect – Held: There is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect – Generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses – In the case at hand, the evidence of PW-7 (Sub Inspector) was supported by PW-5 (Constable), as well as other witnesses – It has come in the evidence of PW-7 that he had asked the passerby to be witnesses but none of them agreed and left without disclosing their names and addresses – The evidence of PW-5 and 7 being absolutely unimpeachable, no reason to hold that non-examination of independent witnesses affected the prosecution case.

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Applicability of – Held: On facts, 32 bags of poppy straw powder weighing 64 Kgs. had been seized from two bags belonging to the accused-appellant – There was no seizure from the person of appellant – Clearly therefore s.50 of the Act was not attracted and consequently compliance with s.50 of the Act was not required in the facts and circumstances of the case.

While on patrolling duty, two police officials, PWs 5

A and 7 found the accused-appellant sitting on two white
coloured bags. On search of the bags, it was found that
those contained 64 Kgs. of poppy straw powder packed
in 32 bags of polythene. The appellant was convicted
under Section 15 of the Narcotic Drugs and Psychotropic
B Substances Act, 1985 (NDPS Act") and sentenced to
undergo rigorous imprisonment for ten years and further
directed to pay a fine of rupees one lakh.

C In the instant appeal, the appellant raised two
contentions, namely, (i) though the alleged seizure had
taken place at a crowded place, yet the prosecution
chose not to examine any independent witness and in the
absence of corroboration from independent witnesses
the evidence of only police officials should not have been
D given credence to and that (ii) there was non-compliance
of Section 50 of the NDPS Act inasmuch as the accused
was not informed his right to be searched in presence of
a gazetted officer or a Magistrate despite the mandatory
nature of the provision and, therefore, the conviction was
E vitiated.

Dismissing the appeal, the Court

F HELD: 1. The evidence of PW-7 (Sub-Inspector) has
been supported by, PW-5 (Constable), as well as other
witnesses. It has come in the evidence of PW7 that he had
asked the passerby to be witnesses but none of them
agreed and left without disclosing their names and
addresses. On a careful perusal of their version this Court
does not notice anything by which their evidence can be
G treated to be untrustworthy. On the contrary it is
absolutely unimpeachable. There is no absolute rule that
police officers cannot be cited as witnesses and their
depositions should be treated with suspect. Generally the
public at large are reluctant to come forward to depose
before the court and, therefore, the prosecution case
H cannot be doubted for non-examining the independent

witnesses. It can safely be stated that in the case at hand there is no reason to hold that non-examination of the independent witnesses affected the prosecution case. [Paras 7, 10] [796-E-H; 797-A; 798-C] A

State of U.P. v. Anil Singh 1988 Supp SCC 686: 1988 Suppl. SCR 611; *State, Govt. of NCT of Delhi v. Sunil and Another* (2001) 1 SCC 652: 2000 (5) Suppl. SCR 144 and *Ramjee Rai and Others v. State of Bihar* (2006) 13 SCC 229: 2006 (5) Suppl. SCR 240 – relied on. B

2. In regard to the issue pertaining to non-compliance of Section 50 of the NDPS Act, the appellant has strenuously urged that the provision, being mandatory, there has to be strict compliance. But, a significant one, in the case at hand 32 bags of poppy straw powder weighing 64 Kgs. had been seized from two bags. It has not been seized from the person of the accused-appellant. It has been established by adducing cogent and reliable evidence that the bags belonged to the appellant. Thus, applying the interpretation of the word “search of person” as laid down by this Court in earlier decisions, to facts of present case, it is clear that the compliance with Section 50 of the Act is not required. [Paras 13, 14] [799-F-G; 800-B-C, D-E] C
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Ajmer Singh v. State of Haryana (2010) 3 SCC 746: 2010 (2) SCR 785; *Madan Lal v. State of H.P.* (2003) 7 SCC 465: 2003 (2) Suppl. SCR 716 and *State of H.P. v. Pawan Kumar* (2005) 4 SCC 350: 2005 (3) SCR 417 – relied on. F

Vijaysinh Chandubha Jadeja v. State of Gujarat (2011) 1 SCC 609; *State of Punjab v. Baldev* (1999) 6 SCC 172:2010 (13) SCR 255; *Karnail Singh v. State of Haryana* (2009) 8 SCC 539: 2009 (11) SCR 470; *Joseph Fernandez v. State of Goa* (2000) 1 SCC 707; *Prabha Shankar Dubey v. State of M.P.* (2004) 2 SCC 56: 2003 (6) Suppl. SCR 444; *Myla Venkateswarlu v. State of Andhra Pradesh* (2012) 5 SCC H

- A **226 and Ashok Kumar Sharma v. State of Rajasthan (2013) 2 SCC 67 – referred to.**

Case Law Reference:

	1988 Suppl. SCR 611	relied on	Para 7
B	2000 (5) Suppl. SCR 144	relied on	Para 8
	2006 (5) Suppl. SCR 240	relied on	Para 9
	(2011) 1 SCC 609	referred to	Para 11
C	2010 (13) SCR 255	referred to	Para 11, 12
	2009 (11) SCR 470	referred to	Para 11
	(2000) 1 SCC 707	referred to	Para 12
D	2003 (6) Suppl. SCR 444	referred to	Para 12
	(2012) 5 SCC 226	referred to	Para 12
	(2013) 2 SCC 67	referred to	Para 12
E	2010 (2) SCR 785	relied on	Para 13
	2003 (2) Suppl. SCR 716	relied on	Para 13
	2005 (3) SCR 417	relied on	Para 13

- F **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1327 of 2010.**

From the Judgment & Order dated 04.05.2009 of the High Court of Delhi at New Delhi in Criminal Appeal No. 394 of 2007.

- G **Susmita Lal for the Appellant.**

Rakesh Kumar Khanna, ASG, Vivek Chib, Harsh Prabhakar, Joby P. Varghese, Anil Katiyar, Chandra Bhushan Prasad for the Respondent.

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The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. The appellant herein has been found guilty of the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of rupees one lakh and, in default of payment of fine, to suffer simple imprisonment for two years.

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2. On 22.7.2005, Ritesh Kumar, a Sub-Inspector, while patrolling reached at the outer gate of ISBT where Constable Balwant Singh met him and both of them found the accused-appellant sitting on two white coloured bags on the left side of the footpath. On seeing the police party he tried to run away leaving the bags which raised a suspicion in the mind of the Sub-Inspector and that led to the apprehension and interrogation of the accused. Eventually, on search of the bags, it was found that those contained 64 Kgs. of poppy straw powder packed in 32 bags of polythene. After the search was carried out samples were sealed and sent to the Forensic Science Laboratory for examination. The investigating agency on completion of other formalities filed the charge-sheet before the trial Court.

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3. The accused pleaded false implication and claimed to be tried.

4. On behalf of the prosecution eight witnesses were examined including the Sub-Inspector, Ritesh Kumar, and Constable Balwant Singh. The learned Additional Sessions Judge, Delhi in Sessions Case No. 90 of 2006, considering the material on record, found the accused guilty of the offence and imposed the sentence as has been stated hereinbefore.

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5. Ms. Sushmita Lal, learned counsel for the appellant, has raised two contentions, namely, (i) though the alleged seizure had taken place at a crowded place, yet the prosecution chose not to examine any independent witness and in the absence

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A of corroboration from independent witnesses the evidence of only police officials should not have been given credence to and
 (ii) there has been non-compliance of Section 50 of the NDPS Act inasmuch as the accused was not informed his right to be searched in presence of a gazetted officer or a Magistrate
 B despite the mandatory nature of the provision and, therefore, the conviction is vitiated.

6. Per contra, it is urged by Mr. Rakesh Khanna, learned Additional Solicitor General and Mr. Vivek Chib, learned advocate appearing for the respondent, state that the learned
 C trial Judge as well as the High Court has correctly placed reliance on the testimony of the official witnesses and there is no mandatory rule that non-examination of independent witnesses in all circumstances would vitiate the trial. It is their
 D further submission that Section 50 of the NDPS Act is not attracted to the case at hand as two bags were searched and not the person of the accused-appellant.

7. To appreciate the first limb of submission, we have carefully scrutinized the evidence brought on record and
 E perused the judgment of the High Court and that of the trial Court. It is noticeable that the evidence of PW-7, namely, Ritesh Kumar, has been supported by Balwant Singh, PW-5, as well as other witnesses. It has come in the evidence of Ritesh Kumar that he had asked the passerby to be witnesses but
 F none of them agreed and left without disclosing their names and addresses. On a careful perusal of their version we do not notice anything by which their evidence can be treated to be untrustworthy. On the contrary it is absolutely unimpeachable. We may note here with profit there is no absolute rule that
 G police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in *State of U.P. v. Anil Singh*¹, wherein this Court took note of the fact that generally the public at large are reluctant to come forward to depose before the

H ¹. 1988 Supp. SCC 686.

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court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses. A

8. At this juncture a passage from *State, Govt. of NCT of Delhi v. Sunil and Another*² is apt to quote : -

"21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions." B
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2. (2001) 1 SCC 652.

A 9. In *Ramjee Rai and Others v. State of Bihar*³, it has been opined as follows: -

B “26. It is now well settled that what is necessary for proving the prosecution case is not the quantity but quality of the evidence. The court cannot overlook the changes in the value system in the society. When an offence is committed in a village owing to land dispute, the independent witnesses may not come forward.”

C 10. Keeping in view the aforesaid authorities, it can safely be stated that in the case at hand there is no reason to hold that non-examination of the independent witnesses affect the prosecution case and, hence, we unhesitatingly repel the submission advanced by the learned counsel for the appellant.

D 11. The second limb of proponent of the learned counsel for the appellant pertains to non-compliance of Section 50 of the NDPS Act. In this context, the learned counsel has drawn inspiration from the pronouncement of the Constitution Bench in *Vijaysinh Chandubha Jadeja v. State of Gujarat*⁴. The E larger Bench after referring to Objects and Reasons of the NDPS Act and various provisions, namely, Sections 41, 42 and 50 of the said Act, to the earlier Constitution Bench decisions in *State of Punjab v. Baldev*⁵ and *Karnail Singh v. State of Haryana*⁶, and certain other authorities, eventually, opined thus:-

F “29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise G

3. (2006) 13 SCC 229.

4. (2011) 1 SCC 609.

5. (1999) 6 SCC 172.

H 6. (2009) 8 SCC 539.

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the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.”

12. The principle of substantial compliance, as laid down in *Joseph Fernandez v. State of Goa*⁷ and *Prabha Shankar Dubey v. State of M.P.*⁸, was not accepted as the ratio laid therein was not in consonance with the dictum laid down in *Baldev Singh's case* (supra). Similar principle has been reiterated in *Myla Venkateswarlu v. State of Andhra Pradesh*⁹ and *Ashok Kumar Sharma v. State of Rajasthan*¹⁰.

13. We have referred to the aforesaid decisions as the learned counsel has strenuously urged that the provision, being mandatory, there has to be strict compliance. But, a significant one, in the case at hand 32 bags of poppy straw powder weighing 64 Kgs. had been seized from two bags. It has not been seized from the person of the accused-appellant. It has been established by adducing cogent and reliable evidence that the bags belonged to the appellant. In *Ajmer Singh v. State of*

7. (2000) 1 SCC 707.

8. (2004) 2 SCC 56.

9. (2012) 5 SCC 226.

10. (2013) 2 SCC 67.

A *Haryana*¹¹ the appellant was carrying a bag on his shoulder and the said bag was searched and contraband articles were seized. While dealing with the applicability of Section 50 of the NDPS Act, two learned Judges referred to the decisions in *Madan Lal v. State of H.P.*¹² and *State of H.P. v. Pawan Kumar*,¹³ and came to hold as follows: -

C “Thus, applying the interpretation of the word “search of person” as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance with Section 50 of the Act is not required. Therefore, the search conducted by the investigating officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the non-compliance with Section 50 of the Act.”

D 14. Tested on the bedrock of the aforesaid dictum, the contention, so assiduously raised, that there has been non-compliance of Section 50 of the NDPS Act is wholly sans substance.

E 15. In view of the aforesaid premised reasons, the appeal, being devoid of merit, stands dismissed.

B.B.B.

Appeal dismissed.

11. (2010) 3 SCC 746.

12. (2003) 7 SCC 465.

13. (2005) 4 SCC 350.