

(2002) 08 SC CK 0116

In the Supreme Court Of India

Case No : Criminal Appeal No. 523 of 2001

Laleshwar Rajak Kalanand Dhobi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2002) 175 CTR 201 : (2002) 255 ITR 178 : (2002) 10 SCC 337 : (2002) 123 TAXMAN 221

Hon'ble Judges : B. N. Kirpal, C.J.; K. G. Balakrishnan, J.; Arijit Pasayat, J

Bench : Full Bench

Final Decision : Allowed

Judgement

B.N. Kirpal, C.J.-In the instant case, the appellant had been convicted of an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and sentenced to 10 years" imprisonment and fine. The case against the appellant was that he was searched in the presence of the panchas and a pink-coloured cloth bag was recovered from him, which contained about 8 lumps of charas which weighed about 925 grams.

2. The trial court on the basis of the evidence convicted the appellant and the same was upheld by the High Court.

3. The learned counsel for the appellant has drawn our attention to the fact that the police officer, who carried out the search, did not inform the accused about his right flowing from Section 50 of the Act. He submits that because of the non-compliance with Section 50, the entire trial stands vitiated as the appellant was denied the right of his person being searched either in the presence of a gazetted officer or a Magistrate.

4. This Court has held that it is obligatory for the prosecution to inform the accused of his right to be searched by a gazetted officer or a Magistrate in order to comply with the mandatory requirement of Section 50. As admittedly this was not done in the present case the trial stood vitiated and on this ground the

appeal is allowed.