
(2012) 09 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 100 of 2007

State of H.P.

APPELLANT

Vs

Ram Rattan

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)

Citation : (2012) 09 SHI CK 0078

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Advocate : R.K. Sharma, A.A.G., with Mr. J.S. Rana, Asstt A.G, for the Appellant; Bimal Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, Judge

1. The present appeal has come up for consideration after leave to appeal has been granted u/s 378 (3) Cr. P.C. in reference to the impugned judgment dated 11.12.2006, passed by the learned Special Judge, Fast Track Court, Kullu, Himachal Pradesh, in Sessions Trial No. 92/04, acquitting the accused-respondent for the offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"). The prosecution case in brief is that on 25.01.2004, a police team headed by SI Daya Sagar along with ASI Narian Singh and other police officials while on patrol duty apprehended the accused-respondent. On obtaining consent of the accused-respondent, his personal search was conducted and a polythene envelope containing 1 Kg. charas was found, out of which two samples 25 gms each were separated and the same were sealed with seal impression "T". Thereafter the samples were sent for chemical examination. After investigation the accused was charge-sheeted for the aforesaid offence.

2. In order to prove its case, the prosecution has examined as many as 7

witnesses. Inter alia on many other grounds and keeping in view the inconsistencies and contradictions considered for acquitting the accused by the learned trial court, the important aspect that requires consideration is that while making his personal search the accused-respondent was not apprised of his legal right of being searched before a gazetted officer or a Magistrate, as such, mandatory requirement of Section 50 of the NDPS Act was not complied with. For non-compliance of mandatory requirement of Section 50 of the NDPS Act, in view of judgment of the Hon''ble Supreme Court (Constitution Bench) in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat*, , the prosecution case is vitiated. Relevant paragraph of *Vijaysinh Chandubha Jadeja*'s case supra are extracted below:-

29. In view of the foregoing discussion, we are of the firm opinion that the object with which right u/s 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 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 in so far 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 a 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.

3. In view of the above discussion, for non-observance of the mandatory requirement of Section 50 of the NDPS Act, the present criminal appeal becomes devoid of any merit, as we also find that the learned Special Judge, Fast Track Court, has rightly arrived at the finding that the prosecution has failed to bring home guilt against the accused beyond reasonable doubt. Accordingly, the appeal is dismissed. The bail bonds furnished by the accused-respondent are cancelled and surety discharged.