(2025:HHC:33178)

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 4144 of 2013
Reserved on: 18.09.2025
Decided on: 23.09.2025

State of Himachal Pradesh .....Appellant

Versus

Soni and another .....Respondents

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Hon'ble Mr. Justice Sushil Kukreja, Judge

[1] *Whether approved for reporting?* Yes.

For the appellant: Mr. J.S. Guleria, Deputy Advocate General.

For the respondents: Mr. Arvind Sharma, Advocate, as Legal Aid Counsel, for respondent No.1.

Ms. Aashima Premy, Advocate, as Legal Aid Counsel, for respondent No.2.

Sushil Kukreja, Judge

The present appeal has been preferred by the appellant-State under Section 378 of the Code of Criminal Procedure (Cr.PC) against the judgment of acquittal dated 30.04.2013 passed by the learned Special Judge, Chamba, District Chamba, HP, in Sessions Trial No.49/12, whereby the accused persons (respondents herein) were acquitted of the offences punishable under Section 20 of Narcotic Drugs

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act').

2. Facts of the case, in brief, giving rise to instant appeal as per the prosecution story, are that on 08.05.2012, a police party headed by HC Devanand, while on patrolling duty towards *Kapahdi Mod-Madhuwad- Seri-Kalhel*, noticed two persons at around 2:40 AM, near Zero Point Jassourgarh, who were sitting on the left side of the high way and on seeing police, they tried to run away, but both of them were apprehended by the police. On suspicion, HC Devanand inquired their credentials, upon which, one of them disclosed his name as Soni (accused/respondent No.1 herein) and another as Ajay Kumar (accused/ respondent No.2 herein). As the aforesaid place was secluded and there was no habitation in the nearby, therefore, no independent witness was available and, as such, SPO Sanjeev Kumar and Constable Som Parkash were associated as witnesses. Thereafter, HC Devanand gave option to the accused persons as to whether they wanted to give their personal search to a Gazetted Officer or a Magistrate, however, both of them had given their consent in their own writing to be searched by the police party present on the spot. Then the police personnel gave their personal search to them, but nothing incriminating was found and after that, personal search of accused persons was carried out by HC Devanand and during personal search of accused Soni (respondent No.1), one cream coloured bag was found underneath his clothes tied

with belly. On opening the said bag, a black coloured hard substance in the shape of slides was found, which on the basis of smelling as well as experience, was found to be *charas* and after weighing, *charas* was found to be 600 grams. Thereafter, *charas* was again put in the same bag, which was sealed in a cloth parcel with five seals of seal impression 'W'. Thereafter, during personal search of accused Ajay (respondent No.2), one red coloured bag was found underneath his vest and on opening the said bag, a black coloured hard substance was found, which was also *charas* and after weightment, it was found to be 400 grams. The recovered *charas* was put in the same red coloured bag, which was also sealed in a cloth parcel with five seals of impressions of seal 'W'. Sample of seal impression 'W' was separately taken on a piece of cloth and thereafter, the police completed other codal formalities and arrested both the accused persons.

3. On completion of the investigation and after receipt of SFSL report, the charge-sheet was prepared and presented before the learned Trial Court.

4. The learned trial Court, vide order dated 12.09.2012 framed charges against the accused persons under Section 20 of NDPS Act, to which they did not plead guilty and claimed trial.

5. The prosecution, in order to prove its case, examined eleven witnesses. Statements of accused persons under Sections 313, Cr.PC

were recorded, wherein they denied all set of incriminating evidence led by the prosecution against them, besides pleaded to be innocent and that they were falsely implicated in the case. However, they did not examine any witness in their defence.

6. The learned Trial Court, vide impugned judgment dated 30.04.2013, acquitted both the accused persons of the charges under Section 20 of the NDPS Act, hence, the instant appeal preferred by the appellant-State.

7. The learned Deputy Advocate General contended that the trial Court has appreciated the evidence on record in a slip-shod and perfunctory manner and acquitted the accused persons on flimsy grounds. He further contended the learned trial Court has not taken into consideration the entire evidence on record and only discussed the FSL report Ext. PX and discarded the testimonies of prosecution witnesses for untenable reasons in the absence of any proof of enmity. He also contended that the learned Trial Court has failed to appreciate the oral as well as documentary evidence in its right perspective and quantity of the contraband. Hence, it is prayed that the impugned judgment of acquittal is liable to be set aside.

8. Conversely, the learned counsel for the respondents/ accused persons contended that it was necessary for the investigation officer to have obtained separate consent of each accused, however,

the fact of the matter is that in memo Ext. PW-1/B the consent of both the accused was obtained jointly as a result of which search of person of both the accused is vitiated and resultantly their trial also stands vitiated, therefore, they submitted that the instant appeal, which is devoid of merits, deserves to be dismissed.

9. We have heard learned Deputy Advocate General for the appellant-State as well as learned counsel for the respondents and also carefully examined the entire records.

10. It is well settled by the Hon'ble Apex Court in a catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Further, if two reasonable views are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11. The scope of power of Appellate Court in case of appeal against acquittal has been dealt with by the Hon'ble Apex Court in ***Muralidhar alias Gidda & another Vs. State of Karnatka reported in (2014) 5 SCC 730*****,** which reads as under :-

> *"10. Lord Russell in Sheo Swarup [1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said,*
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> > *"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.*
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> *11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:*
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> > *"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."*
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> *12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [3], Madan Mohan Singh [4], Atley [5] , Aher Raja Khima [6], Balbir Singh [7], M.G. Agarwal [8], Noor Khan [9], Khedu Mohton [10], Shivaji Sahabrao Bobade [11], Lekha Yadav [12], Khem Karan [13], Bishan Singh [14], Umedbhai Jadavbhai [15], K. Gopal Reddy [16], Tota Singh [17], Ram Kumar [18], Madan Lal [19], Sambasivan [20], Bhagwan Singh [21], Harijana Thirupala [22], C. Antony [23], K. Gopalakrishna [24], Sanjay Thakran [25] and Chandrappa [26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:*
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> > *(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by*

the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

12. The Hon'ble Supreme Court in ***Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471***, observed as under:-

"31.The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1.Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical

conclusion which justifies acquittal. [State of Haryana vs. Lakhbir]

31.2.However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1.Where the approach or reasoning of the High Court is perverse;

(a)Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh (1980)

(c)Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2.Where acquittal would result is gross miscarriage of justice;

(a)Where the findings of the High Court, disconnecting the

accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610].”

13. In ***H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581*****,** the Hon’ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:-

“8. In this appeal, were are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1.The acquittal of the accused further strengthens the presumption of innocence;

8.2.The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3.The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5.The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no

other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

14. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

15. Adverting to the facts of the case on hand, the accused persons have been tried for commission of the offence under Section 20 of the NDPS Act on the allegations that on 08.05.2012, at about 2:40 in the midnight, at Zero Point Jassourgarh, *charas* weighing 600 grams was

recovered from accused Soni and 400 grams from accused Ajay Kumar.

16. To substantiate the said charges framed against the respondents-accused persons and to bring home their guilt, the prosecution examined as many as 11 witnesses. However, case of the prosecution mainly rests upon the statements of PW-1 Constable Som Prakash, PW-2 SPO Sanjeev Kumar and PW-11 HC Devanand (Investigating Officer), who have been examined primarily to prove search, recovery and seizure of *charas* in question from the conscious possession of the accused persons.

17. All the aforesaid witnesses i.e. PW-1 Constable Som Prakash, PW-2 SPO Sanjeev Kumar and PW-11 HC Devanand (Investigating Officer) have deposed in one voice that on 08.05.2012, while they were on patrolling duty towards Kapahdi Mod, Madhuwad, Seri and Kalhel, two persons were seen sitting on the left side of the high way at around 2:40 AM, at Zero Point Jassourgarh. On seeing the police officials, both these persons tried to slip away, but they were nabbed and on suspicion, their credentials were questioned, upon whcih, one of them, disclosed his name as Soni and another as Ajay Kumar. The place was secluded and there was no habitation in the nearby upto the radiation of two Kms. Since no independent witness was available, therefore, PW-1 Constable Som Parkash and PW-2 SPO Sanjeev Kumar were associated as witnesses and started the proceedings. They offered

themselves before these two persons to have their personal search and a memo Ext. PW-1/A was prepared in this regard, which was signed by PW-1 and PW-2 as well as the accused persons. Both the accused persons were apprised of their legal right to have their personal search either in the presence of Magistrate or Gazetted Officer, however, they had given their consent in their own writings with their respective signatures, vide consent memo Ext. PW1/B and thereafter their personal search was carried out. During personal search of accused Soni, one cream coloured bag was found underneath his clothes tied with belly and on opening the same, a black coloured hard substance was found contained in the shape of slides. On the basis of smelling, burning as well as experience, the hard substance was found to be *charas* and after weighing, it was found to be 600 grams. Thereafter, during personal search of accused Ajay, one red coloured bag was found underneath his vest and on opening the same, it also contained a black coloured hard substance, which was found to be c*haras* and after weightment, it was found to be 400 grams.

18. At the very outset, it would be pertinent to mention here that both the accused persons have been acquitted by the trial court on the ground that since no percentage of tetrahydrocannabinol has been mentioned in SFSL report, Ext.PX, in such circumstances, the substance recovered cannot be said to be *charas* in view of the judgment passed in

Sunil Vs. State of HP, 2010(1) Shim. LC 192. The reasons for acquitting both the accused persons given by the Trial Court, in its judgment dated 30.04.2013, are quoted here-in-below :-

> ***"18. Since in the present case no percentage of tetrahydrocannabinol has been mentioned, in such circumstances, I am of the considered opinion, that the contraband good, so recovered, cannot be said to be 'Charas' in view of report Ex. PX of Assistant Chemical Examiner and in view of the judgment of our Hon/ble High Court in Sunil (Supra).***
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> ***23. In view of above referred case(s) law laid down by our Hon'ble High Court it is not proved that accused was found in possession of 'Charas' on the basis of report Ex. PX. The report in hand also suffers from the same vice. In the above referred case (s) law the sample analyzed by the laboratory does not confirm to the definition of 'Charas'."***

19. However, the judgment in ***Sunil's*** case (supra) has been overruled by a larger Bench of this Court in ***State of HP Vs. Mehboob Khan and etc., 2014 Crl. LJ 705***, by holding as under:-

> ***"55. ....***
>
> ***a. ....***
>
> ***b. ... ...***
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> ***c. In view of the detailed discussion hereinabove, the Division Bench while deciding Sunil's case supra has definitely erred in taking note of the percentage of tetrahydrocannabinol in three forms of cannabis i.e. Bhang, Ganja and Charas and hence, concluded erroneously that without there being no reference of the resin contents in the reports assigned by the Chemical Examiners in those cases, the contraband recovered is not proved to be Charas, as in our opinion, the Charas is a resinous mass and the presence of resin in the stuff analyzed without there being any evidence qua the nature of the neutral substance, the entire mass has to be taken as Charas.***
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> ***d. There is no legal requirement of the presence of particular percentage of resin to be there in the sample and the presence of the resin in purified or crude form is sufficient to hold that the sample is that of Charas. The law***

laid down by the Division Bench in Sunil's case that 'for want of percentage of tetrahydrocannabinol or resin contents in the samples analyzed, the possibility of the stuff recovered from the accused persons being only Bhang i.e. the dried leaves of cannabis plant, possession of which is not an offence, cannot be ruled out', is not a good law nor any such interpretation is legally possible. The percentage of resin contents in the stuff analyzed is not a determinative factor of small quantity, above smaller quantity and less than commercial quantity and the commercial quantity. Rather, if in the entire stuff recovered from the accused, resin of cannabis is found present on analysis, whole of the stuff is to be taken to determine the quantity i.e. smaller, above smaller but less than commercial and commercial, in terms of the notification below Section 2 (vii a) and (xxiii a) of the Act.

e. …. … ….
f. …. … …..

g. We further hold that in any case the judgment in Sunil's case is a judgment in personam and not a judgment in rem and as such its universal application in later judgment s rendered by this Court and also by the trial Courts, without appreciation of the given facts and circumstances of each case and the evidence available on record, was not legally permissible."

20. Therefore, as the judgment in ***Sunil's*** case has been overruled by a larger Bench of this Court in ***Mehboob Khan's*** case (supra), the accused persons could not have been acquitted by the Trial Court on the basis of the judgment rendered in ***Sunil's*** case due to the non mention of percentage of tetrahydrocannabinol in SFSL report Ext.PX.

21. Learned counsel for the respondents vehemently contended that there is violation of Section 50 of NDPS Act as according to the prosecution case itself, *charas* was allegedly recovered during the personal search of both the accused persons and vide consent memo

Ext.PW-1/B, the Investigation Officer jointly communicated the right available to both the accused and thereafter, he got signatures from both the accused in a single consent memo. In this regard, learned counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Parmanand and another, (2014) 5 SCC 345,*** wherein it is held that consent taken from two accused persons by way of a joint consent memo do not meet the requirement of Section 50 of NDPS Act, as in view of the stringent provisions of the NDPS Act, both the accused persons have a right to be informed separately about their right to be searched before a Magistrate or a Gazetted Officer. Learned Counsel for the respondents referring to Para-17 of ***Parmanand's*** case (supra) and paras-57 and 64 in the case of ***Ranjan Kumar Chaddha Vs. State of Himachal Pradesh, AIR 2023 Supreme Court 5164,*** submitted that giving joint communication of the right under Section 50 would vitiate recovery of contraband. Learned Counsel referring to the statement of Investigation Officer and other spot witness submitted that there is total non-compliance with the provision of Section 50 of NDPS Act as the Investigation Officer has not complied with the mandate of Section 50 of NDPS Act as each of the accused has not been individually communicated of his right, therefore, the recovery stands vitiated in the matter.

22. With respect to the contention of learned counsel for the respondents that there was a violation of Section 50 of NDPS Act, it is necessary to find out that whether the joint consent memo with respect to the communication of right available under Section 50 of NDPS Act is sufficient and valid in law. In this occasion, it is relevant and useful to see the judgment of the Hon'ble Apex Court in the case of ***State of Rajasthan Vs. Parmanand and others, (2014) 5 SCC 345,*** wherein it has been held that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest Gazetted Officer or before a nearest Magistrate. The relevant portion of the judgment is as follows:-

> *"17.In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate……"*

23. Similar reiteration of law by the Hon'ble Supreme Court can be found in a recent judgment in the case of ***Ranjan Kumar Chadha***

Vs. State of Himachal Pradesh, AIR 2023 Supreme Court 5164, wherein it has been held as under:-

> *"57. This Court in Parmanand (supra) has also held that a joint communication of the right under Section 50 would be bad in law. The right under Section 50 could be said to be violated where in a case of multiple persons intended to be searched, only a joint communication has been given or where the right has been exercised or declined by one of them on behalf of the other. While, a written communication of the right is not required, the right has to be communicated in clear words to each person individually whose search is intended to be conducted, and no person can either waive or exercise this right at the behest of another. Thus, in case of multiple persons, each of them must be individually communicated of their right and must exercise or waive the same in their own individual capacity.*
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> *64. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-*
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> *(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.*
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> *(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.*
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> *(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.*
>
> *(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.*
>
> *(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.*
>
> *(vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour*

should be made to take him before the nearest Magistrate.

(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act, also happens to be recovered, the provisions relating to the NDPS Act, shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act, and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings."

24. Hence, in view of the above stated authoritative pronouncement of law laid down by the Hon'ble Supreme Court, the consent taken from multiple accused persons by way of a joint consent memo do not meet the requirement of Section 50 of NDPS Act, as in view of the stringent provisions of the NDPS Act, each of the accused has a right to be informed separately about his right to be searched either before a Magistrate or a Gazetted Officer.

25. Now, adverting to the facts of the case on hand. In the instant case, we have gone through the entire evidence on record and also the consent memo Ext. PW1/B. Admittedly one cream coloured bag was found underneath the clothes of accused Soni tied with his belly and on opening the bag, *charas* weighing 600 grams was recovered.

Similarly, during personal search of accused Ajay, one red coloured bag was found underneath his vest and on opening the bag, it also contained *charas* weighing 400 grams. As per evidence on record, both the accused persons have been apprised of their legal right to have their personal search either in the presence of Magistrate or Gazetted Officer. However, both the accused persons gave their consent to have their personal search before the police party present there. To this effect a joint consent memo Ext. PW1/B was prepared, which was signed by both the accused persons as such the said lapse committed by the Investigation Officer amounts to violation of mandatory requirement, which was necessary to comply under Section 50 of NDPS Act. Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, informing the right available under NDPS Act jointly to both the accused persons is a clear violation of Section 50 of NDPS Act.

26. Consequently, in view of the detailed discussion made hereinabove, we are of the firm opinion that the prosecution has failed to prove its case against both the accused persons beyond reasonable doubt. Therefore, the appeal, which is devoid of merits, deserves dismissal and is accordingly dismissed, however, in view of the reasons given by this Court and not for the reasons assigned by the learned Trial Court. Bail bonds are discharged.

27. In view of the provisions of Section 481 of *Bhartiya Nagarik Suraksha Sanhita*, 2023, both the respondents are directed to furnish personal bonds in the sum of Rs.50,000/- each with one surety each in the like amount to the satisfaction of the Registrar/Addl.Registrar (Judicial) of this Court within a period of four weeks with the stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondents on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

The appeal is accordingly disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Sushil Kukreja)
Judge

September 23, 2025
(V.Himalvi)