

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NOS.2085-2086 OF 1996

State of Punjab

Appellant(s)

VERSUS

Vijay Shankar

Respondent (s)

(With Office Report)

Date : 21/08/2002 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s) Mr. Bimal Roy Jad, Adv.
Mr. B.K. Khurana, Adv.
Mrs. Sunita Pandit, Adv.

For Respondent (s) Mr. Rohit Minocha, Adv.(A.C.)

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T..J.
.SP2

Heard learned counsel for the parties for twenty minutes.

The appeals succeed.

The Judgment and Order passed by the High Court cannot be sustained and the same is thus set aside and quashed and that of the Sessions Judge stands restored. The respondent be taken into custody to serve out the sentence.

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(R.K. Dhawan)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2085-2086 OF 1996@@
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versus

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
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The Narcotic Drugs and Psychotropic Substances Act, 1985 was incorporated and introduced in the Statute book to amend the laws relating to Narcotic Drugs and to make stringent provisions to control and regulate the Narcotic Drugs and Psychotropic Substances. The recent trend of judicial decisions depicts the strictness of the interpretation of the statute and the matter has had travelled on more than one occasion before the Constitution Bench of this Court for its proper appreciation and interpretation.

In State of Punjab vs. Baldev Singh (1999(6) SCC@@
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172), the Constitution Bench of this Court in no uncertain terms stated the requirement of law as regards the compliance of Section 50 as below:

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25. To be searched before a gazetted officer or a Magistrate, if the suspect so requires, is an extremely valuable right which the legislature has given to the person concerned

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having regard to the grave consequences that may entail the possession of illicit articles under the NDPS Act. It appears to have been incorporated in the Act keeping in view the severity of the punishment. The rationale behind the provision is even otherwise manifest. The search before a gazetted officer or a Magistrate would impart much more authenticity and credit-worthiness to the search and seizure proceeding. It would also verily strengthen the prosecution case. There is, thus, no justification for the empowered officer, who goes to search the person, on prior information, to effect the search, of not informing the person concerned of the existence of his right to have his search conducted before a gazetted officer or a Magistrate, so as to enable him to avail of that right. It is, however, not necessary to give the information to the person to be searched about his right in writing. It is@@
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sufficient if such information is@@
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communicated to the person concerned orally@@
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and as far as possible in the presence of@@
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some independent and respectable persons@@

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witnessing the arrest and search. The@@
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prosecution must, however, at the trial,
establish that the empowered officer had
conveyed the information to the person
concerned of his right of being searched in
the presence of a Magistrate or a gazetted
officer, at the time of the intended search.
Courts have to be satisfied at the trial of
the case about due compliance with the
requirements provided in Section 50. No
presumption under Section 54 of the Act can
be raised against an accused, unless the
prosecution establishes it to the
satisfaction of the court, that the
requirements of Section 50 were duly complied
with." (emphasis supplied)

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Turning attention on to the contextual facts, it
appears that the respondent-accused was intercepted
having in possession of 105 kg. of poppy husks on 10th
October, 1991 in the State of Punjab. Learned Sessions
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Judge upon consideration of the facts available on record
did record that the prosecution has been able to prove
its case against accused beyond any shadow of doubt and
as such the accused was held guilty of Section 15 of the
NDPS Act and he was convicted accordingly and sentenced
to undergo imprisonment for a period of 10 years and to
pay a fine of rupees one lakh, in default, to undergo
further period of imprisonment for two and a half years.
It is this order which came up for challenge before the
High Court. The High Court, however, dealt with the
issue recording therein that the requirement of Section
50 of the NDPS Act which has since been declared to be
mandatory, shall have to be in writing and not an oral
intimation. While it is true that the judgment under
appeal presently was earlier in point of time than
Baldev Singh (supra) but we do feel it expedient to note@@
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that since the Constitution Bench has settled the law as
above, it would be a travesty of justice to lay by and
allow the decision impugned to be operative.

Be it noted that the requirement of the statute
does not specifically record that this offer of being
searched should be in writing as such - By reason
therefore specific requirement as is under the impugned
judgment does not stand the test of reasonable
interpretation.

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On the wake of the aforesaid, we do not find any
justification for the High Court to offer such an
interpretation more so by reason of the state of law as
is available presently in terms of the decision in Baldev@@
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Singh (supra).@@
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The appeals thus succeed.

The Judgment and Order passed by the High Court
cannot be sustained and the same is thus set aside and
quashed and that of the Sessions Judge stands restored.

The respondent be taken into custody to serve out the sentence.

.SP1

.....J.
(U.C.BANERJEE)

.....J.
(SHIVARAJ V. PATIL)

New Delhi,
August 21, 2002