

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

CRIMINAL APPEAL NO(s). 943 OF 2005

VIJAYSINH CHANDUBHA JADEJA

Appellant (s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(With appln(s) for PERMISSION TO FILE VOLUME-II and office report )

CRL. APPEAL NO.974 OF 2003

CRL. APPEAL NO. 1809 of 2009

Date: 01/12/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. Pravin H. Parekh, Sr.Adv.  
Mr. Lalit Chauhan, adv.  
Ms. Pallavi Shrivastava, Adv.  
Mr. Rajat Nair, Adv.  
For M/S. Parekh & Co.,Adv.

Mr. Tara Chandra Sharma, Adv.

Mr. Soumyajit Pani, Adv.  
Mr. Chettaranjan Hati, Adv.  
Mr. Radha Shyam Jena, Adv.

For Respondent(s)

Ms. Hemantika Wahi,Adv.  
Ms. Jesal, Adv.

Mr. P.K. Dey, Adv.  
Ms. Sadhana Sandhu, Adv.  
Mrs Anil Katiyar

Mr. Ranjan Mukherjee, Adv.  
Mr. S. Bhoumick, Adv.  
Mr. S.C. Ghosh, Adv.

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

Criminal Appeal No.943 of 2005

This appeal is allowed.

Criminal Appeal No. 974 of 2003

This appeal is dismissed.

Criminal Appeal No.1809 of 2009  
This appeal is allowed.

(Sukhbir Paul Kaur)  
Court Master

(Renuka Sadana)  
Court Master

(Common signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.943 OF 2005

VIJAYSINH CHANDUBHA JADEJA

Appellant(s)

Versus

STATE OF GUJARAT

Respondent(s)

W I T H

CRIMINAL APPEAL NO.974 OF 2003

CRIMINAL APPEAL NO.1809 OF 2009

O R D E R

CRIMINAL APPEAL NO. 943 OF 2005

The subject matter that arises for our consideration in this appeal is squarely covered by the Constitution Bench Judgment of this Court in the case of very appellant reported in 2010 (11) SCALE 509 titled Vijaysinh Chandubha Jadeja versus State of Gujarat.

It is an admitted fact that the appellant herein was not informed of his existing right to be searched before a Gazetted Officer or a Magistrate. In the present case, no doubt, as is evident from the

record, an option was given as to whether he wanted to be searched in the presence of any Gazetted Officer or

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Magistrate or not. The appellant is stated to have rejected the said proposal. The fact remains that the authority did not inform about the existing right of

the appellant to be searched in the presence of the Magistrate or Gazetted Officer. In the circumstances, there is no option except to hold that the prosecution did not comply with the requirement of Section 51 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the N.D.P.S. Act) and the conviction is liable to be set aside only on this ground.

Accordingly, the appellant's conviction under Section 21 of the N.D.P.S. Act is set aside. The sentence including the fine amount imposed is also set aside. The appellant has already been released on bail. His bail bonds shall remain discharged.

This appeal is accordingly, allowed.

CRIMINAL APPEAL NO. 974 OF 2003

This appeal preferred by the State of West Bengal is liable to be dismissed following a Constitution Bench Judgment of this Court reported in 2010 (11) SCALE 509 titled Vijaysinh Chandubha Jadeja versus State of Gujarat since the prosecution admittedly failed to comply with the requirement of Section 51 of the N.D.P.S. Act.

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It is evident from the record that the respondent-accused was told as to whether he would like to be searched in the presence of a Magistrate or a Gazetted Officer. Admittedly, the respondent-accused was not informed of the existing right to be searched in the presence of a Magistrate or a Gazetted Officer. Following the said judgment, this appeal is dismissed.

The respondent-accused is already on bail. His bail bonds shall stand discharged.

CRIMINAL APPEAL NO. 1809 OF 2009

This appeal is directed against the impugned order dated 22.2.2008 passed by the High Court of Delhi at New Delhi wherein the High Court confirmed the conviction and sentence of the appellant for the offence punishable under Section 21 of the N.D.P.S. Act.

It is not necessary to go into the facts that led to the conviction of the appellant under the provisions of the said Act and sentence to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1,00,000/- since the appeal is to be disposed of following the Constitution Bench Judgment of this Court reported in 2010 (11) SCALE 509 titled Vijaysinh Chandubha Jadeja versus State of Gujarat wherein this Court held :-

"18. Although the Constitution Bench did not decide in absolute terms the question whether or not Section 50

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of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

22. In view of the foregoing discussion, we are of the firm opinion that the object with which 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 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....."

On the facts of the present case, it is evident that the appellant herein was merely put on notice as to whether he would like to be searched in the presence of a Magistrate or a Gazetted Officer but he was not informed of his right to be searched only in

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the presence of a Magistrate or a Gazetted Officer as is required in law. Therefore, the prosecution is vitiated for non compliance of the requirement under Section 50(1) of the NDPS Act.

Be that as it may, we have noticed another infirmity in the present case, namely that in the notice issued under Section 50 of the NDPS Act informing the appellant as to whether he would like to be searched in the presence of a Magistrate or a Gazetted Officer there is a mention of F.I.R. No.470 dated 15.7.1995 for the offence punishable under Section 21/61/85 of the NDPS Act. It is surprising as

to how an FIR was issued even before the search of the appellant and recovery of any contraband. It is not

the case of prosecution that any case was registered against the appellant based on some prior information even before the search of the appellant. It appears

that the whole of the prosecution against the appellant herein is a fabricated one.

For the aforesaid reasons, the conviction and sentence of the appellant including the fine awarded by the Courts below is set aside.

The appeal is accordingly, allowed.

The appellant has already undergone the sentence and stated to have paid the fine amount of

Rs.1,00,000/-.

In the circumstances, there shall be a  
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direction directing the respondent herein to forthwith  
return the fine amount of Rs.1,00,000/- collected from  
the appellant.

.....J.  
(B.SUDERSHAN REDDY)

.....J.  
(SURINDER SINGH NIJJAR)

New Delhi,  
December 01, 2010