

CASE NO.:
Appeal (crl.) 1097 of 2002

PETITIONER:
State of Rajasthan

RESPONDENT:
Babu Ram

DATE OF JUDGMENT: 05/06/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Rajasthan High Court at Jodhpur allowing the appeal filed by the respondent (hereinafter referred to as the 'accused'). Before the High Court the challenge was to the order dated 31.8.1987 passed by the learned Sessions Judge, Balotra, in Sessions Case No.10/86 by which while acquitting the accused for offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as the 'Act'), convicted him for offence punishable under Section 17 of the Act and sentenced him to undergo RI for 10 years and to pay a fine of rupees one lakh with default stipulation.

2. The High Court directed acquittal on the ground that there was non-compliance of mandatory requirement of Section 50 of the Act. Before the High Court though many points were urged, the primary stand was non-compliance of Section 50 of the Act. The High Court accepted that there was non-compliance as alleged. Accordingly, the respondent was acquitted by setting aside the conviction and consequential sentence.

3. In support of the appeal, learned counsel for the appellant-State submitted that search was not of person of the accused and of bag which was with accused and, therefore, the High Court erroneously held that the requirements of Section 50 of the Act were required to be complied with.

4. The controversy turns round Section 50 of the Act and the same (at the relevant time) reads as under:
"Conditions under which search of persons shall be conducted:

(1) When any officer duly authorized under Section 42 is about to search any person under the provisions of Section 41, section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate

before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female."

5. The question, which requires consideration, is what is the meaning of the words "search any person" occurring in Sub-section (1) of Section 50 of the Act. Learned counsel for the accused has submitted that the word "person" occurring in Section 50 would also include within its ambit any bag, briefcase or any such article or container, etc., being carried by such person and the provisions of Section 50 have to be strictly complied with while conducting, search of such bag, briefcase, article or container, etc. Learned counsel for the State has, on the other hand, submitted that there is no warrant for giving such an extended meaning and the word "person" would mean only the person himself and not any bag, briefcase, article or container, etc., being carried by him.

6. The word "person" has not been defined in the Act. Section 2(xxix) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code, however, does not define the word "person". Section 2(y) of the Code says that the words and expressions used therein and not defined but defined in the Indian Penal Code, 1860 have the meanings respectively assigned to them in that Code. Section 11 of the Indian Penal Code says that the word "person" includes any Company or Association or body of persons whether incorporated or not. Similar definition of the word "person" has been given in Section 3(42) of the General Clauses Act. Therefore, these definitions render no assistance for resolving the controversy in hand.

7. One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (See Craies on Statute Law, Seventh ed. page 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary (See the Chapter - The Rule of Literal Construction -page 78 - Ninth ed.). This Court has also followed this principle right from the beginning. In *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376, S.R. Das, J. said: -

"The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another

meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

8. A catena of subsequent decisions have followed the same line. It, therefore, becomes necessary to look to dictionaries to ascertain the correct meaning of the word "person".

9. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

10. The scope and ambit of Section 50 of the Act was examined in considerable detail by a Constitution Bench in State of Punjab v. Baldev Singh (1999 (6) SCC 172) and para 12 of the reports is being reproduced below :

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

11. The Bench recorded its conclusion in para 57 of the reports and sub-paras (1), (2), (3) and (6) are being reproduced below :

"57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorized officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under Sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a

Magistrate for search 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 his person, during a search conducted in violation of the provisions of Section 50 of the Act.

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(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law."

12. These aspects were highlighted in State of H.P. v. Pawan Kumar (2005 (4) SCC 350).

13. In view of the aforesaid judgment by a three Judge Bench of this Court, the acquittal, as directed by the High Court, is clearly unsustainable. However, we find that other points were urged in support of the appeal before the High Court, but the High Court allowed the appeal filed by the accused only on the ground of non-compliance of Section 50 of the Act. It did not examine the other grounds of challenge. We, therefore, remit the matter to the High Court to hear the appeal afresh on grounds other than that of alleged non-compliance with Section 50 of the Act, which, as noted above, has no application to the facts of the case.

14. The appeal is allowed to the aforesaid extent.