REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 459 OF 2017

SK RAJU @ ABDUL HAQUE @ JAGGA .....APPELLANT

Versus

STATE OF WEST BENGAL .....RESPONDENT

J U D G M E N T

Dr Dhananjaya Y Chandrachud

1 The present appeal, by special leave, is directed against a judgment dated 19 February 2016 of a Division Bench of the Calcutta High Court. The High Court upheld the conviction of the appellant by the Additional Sessions Judge (**"ASJ")** and Special Court under the Narcotic Drugs and Psychotropic Substances Act 1985 (**"the Act"**). On 15 February 2014, the ASJ had convicted the appellant of an offence punishable under Section 20(b)(ii)(C) of the Act. The

appellant was sentenced to 14 years of rigorous imprisonment and directed to pay a fine of Rs 1,40,000.

2 The facts of the case are as follows. On 15 November 2011, Sub-Inspector Prasanta Kr. Das, Narcotics Cell, DD (**PW-2**) received information that a drug dealer would be in the vicinity of Tiljala Falguni Club, 138B/1, Picnic Garden Road, near Tiljala Police Station to supply narcotic drugs in the afternoon. PW-2 sought permission from the Assistant Commissioner of Police, Anti-Narcotics Department, DD to organize a raid (Exhibit-2). Permission was granted by the superior officer on the same day and a raiding team consisting of PW-2 and others reached the spot at about 12.50 pm. At around 1.40 pm, the source of the information pointed out to the appellant who was coming along Picnic Garden Road. The appellant was intercepted and detained immediately by the raiding party in front of Falguni Club. The appellant was informed about the reasons for his detention and the identities of the raiding party were disclosed to him. Subsequently, the appellant also disclosed his identity to the raiding party. PW-5 was one of the two independent witnesses who agreed to be a witness to this search. The appellant was informed about his legal right to be searched either in the presence of a magistrate or a gazetted officer (Exhibit-3). The appellant opted for being searched by a gazetted officer. A gazetted officer, Inspector Joysurja Mukherjee ("**PW-4**"), arrived on the scene at about 3.20 pm. He provided the appellant with a "second option". The appellant was asked by PW-4 whether he wished to be searched in the presence of a gazetted

officer or a magistrate (Exhibit-4). Once again, the appellant consented to be searched in the presence of a gazetted officer. PW-4 then inquired of the appellant whether he wanted to search PW-2 before the latter would carry out his search. The appellant agreed to search PW-2 before his own search was carried out by PW-2. No narcotic substance was recovered from the person of PW-2. PW-2 recovered nineteen “deep brown / blackish broken rectangular sheets” from a black polythene packet which was inside a biscuit colour jute bag, which the appellant was carrying in his right hand. The sheets were tested by PW-2 on the spot with the help of a test kit. The substance was found to be *charas*. The substance was also weighed using a weighing scale. The appellant was found to be in possession of 1.5 kilograms of *charas*. Cash amounting to Rs. 2,400/- was recovered from the trouser of the appellant.

3 Learned counsel for the appellant has argued that there was non-compliance with Section 42 of the Act. After PW-2 was intimated about the appellant’s arrival, he sought permission from the Assistant Commissioner of Police, Anti-Narcotics Department. Upon receipt of the letter of permission from the Assistant Commissioner, PW-2 proceeded to the place of the occurrence. PW-2 admitted in his cross-examination that he was aware of the gravity of the need for compliance with Section 42. However, apart from a letter seeking permission to act on the information which was addressed to a superior officer, he did not (it was urged) diarise it elsewhere. Learned counsel urged that PW-2 had not complied with the mandatory requirements of Section 42, as a result

of which the trial stood vitiated. He has relied on the following decisions of this Court to buttress the submission: **Abdul Rashid Ibrahim Mansuri** v **State of Gujarat** ("**Mansuri**"),[1] **Directorate of Revenue** v **Mohammed Nisar Holia** ("**Holia**")[2] and **State of Rajasthan** v **Jagraj Singh** ("**Jagraj**").[3]

4 Learned counsel for the appellant also submitted that Section 50 has also not been complied with. According to him, not only was the bag of the appellant searched, but a search of the person of the appellant also resulted in the recovery of cash in the amount of Rs. 2,400/- from the left pocket of his trouser. Hence, it was urged by the learned counsel that though Section 50 was mandatorily required to be complied with, there was a breach of observance. Since the appellant was merely given an 'option' by PW-2 and PW-4 to be searched before a gazetted officer and was not informed that it was his legal right to be searched before a gazetted officer or a magistrate, the search was, it was urged, vitiated. On this aspect, learned counsel for the appellant has relied on the following judgments of this Court: **Myla Venkateswarlu** v **State of Andhra Pradesh** ("**Venkateswarlu**"),[4] **State of Rajasthan** v **Parmanand** ("**Parmanand**")[5] and **Namdi Francis Nwazor** v **Union of India** ("**Namdi**").[6]

On the other hand, the learned counsel appearing on behalf of the respondent-State has supported the judgment of the High Court and the legality of the

[1] (2000) 2 SCC 513.
[2] (2008) 2 SCC 370.
[3] (2016) 11 SCC 687.
[4] (2012) 5 SCC 226.
[5] (2014) 5 SCC 345.
[6] (1998) 8 SCC 534.

conviction. He argued that since the search was carried out in a public place, this case falls solely within the ambit of Section 43 and compliance with Section 42 was not necessary. Learned counsel for the respondent-State also urged that Section 50 is not attracted when the search involves the search of a bag or an article belonging to a person.

5 Section 42 of the Act deals with the power of entry, search, seizure and arrest without warrant or authorization. It reads thus:

> "42. Power of entry, search, seizure and arrest without warrant or authorisation.—
>
> (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—
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> (a) enter into and search any such building, conveyance or place;
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> (b) in case of resistance, break open any door and remove any obstacle to such entry;
>
> (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or

conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

Section 43 of the Act confers powers on the empowered officer to seize a substance and arrest a suspect in a public place. It provides thus:

"43. Power of seizure and arrest in public place.— Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this

> Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.
>
> **Explanation.— For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.**" [Emphasis supplied]

6 We are unable to accept the submission made by the learned counsel for the appellant that Section 42 is attracted to the facts of the present case. In **State of Punjab** v **Baldev Singh** ("**Baldev Singh**"),[7] Chief Justice Dr A S Anand speaking for a Constitution Bench of this Court, held:

> "The material difference between the provisions of Section 43 and Section 42 is that whereas **Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure**, Section 43 does not contain any such provision and as such while acting **under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public place where such possession appears to him to be unlawful.**" [Emphasis supplied]

In **Narayanaswamy Ravishankar** v **Assistant Director**, **Directorate of Revenue Intelligence**,[8] a three judge Bench of this Court considered whether the empowered officer was bound to comply with the mandatory provisions of Section 42 before recovering heroin from the suitcase of the appellant at the airport and subsequently arresting him. Answering the above question in the negative, the Court held:

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[7] (1999) 6 SCC 172.
[8] (2002) 8 SCC 7.

> "In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant."

In **Krishna Kanwar (Smt) Alias Thakuraeen** v **State of Rajasthan**,[9] a two judge Bench of this Court considered whether a police officer who had prior information was required to comply with the provisions of Section 42 before seizing contraband and arresting the appellant who was travelling on a motorcycle on the highway. Answering the above question in the negative, the Court held:

> "Section 42 comprises of two components. One relates to the basis of information i.e.: (i) from personal knowledge, and (ii) information given by person and taken down in writing. **The second is that the information must relate to commission of offence punishable under Chapter IV and/or keeping or concealment of document or article in any building, conveyance or enclosed place which may furnish evidence of commission of such offence. Unless both the components exist Section 42 has no application.** Sub-section (2) mandates, as was noted in Baldev Singh case that where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior. Therefore, sub-section (2) only comes into operation where the officer concerned does the enumerated acts, in case any offence under Chapter IV has been committed or documents etc. are concealed in any building, conveyance or enclosed place. **Therefore, the commission of the act or concealment of document etc. must be in any building, conveyance or enclosed place.**" [Emphasis supplied]

[9] (2004) 2 SCC 608; Rajendra v State of M.P **.**, (2004) 1 SCC 432.

7 An empowered officer under Section 42(1) is obligated to reduce to writing the information received by him, only when an offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an article is concealed in a building, conveyance or an enclosed place. Compliance with Section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in a building, conveyance or an enclosed place. Section 43 is attracted in situations where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

8 The appellant was walking along the Picnic Garden Road. He was intercepted and detained immediately by the raiding party in front of Falguni Club, which was not a building, conveyance or an enclosed place. The place of occurrence was accessible to the public and fell within the ambit of the phrase “public place” in the explanation to Section 43. Section 42 had no application.

9 The cases relied on by the learned counsel for the appellant will also not apply in the context of the facts before us. In **Mansuri**, an auto-rickshaw driver was intercepted by police personnel. Four gunny bags of *charas* were recovered from the auto-rickshaw. The police officer who had prior information about transportation of some narcotic substance, had neither taken down the information before carrying out the seizure and arrest, nor apprised his superior

officer. He contended that the action taken by him was under Section 43 and not Section 42. Rejecting the argument of the State, this Court held that compliance with Section 42 was required as the auto-rickshaw was a private vehicle and not a public conveyance as contemplated under Section 43. Similarly, in **Jagraj**, contraband was recovered from a jeep which was intercepted by police personnel on a public road after receiving prior information. The police officer who had received the information, admitted to not taking it down in writing, contending that Section 43 would be applicable. Rejecting the argument of the State, this Court held that the jeep which was intercepted, was not a public conveyance within the meaning of Section 43 and compliance with Section 42(1) was therefore mandatory. In **Holia**, Mandrax tablets were recovered from the hotel room of the respondent. The information was not reduced to writing by the officer who had first received the information. The State claimed that compliance with Section 42 was not required as the hotel was a public place. Rejecting the submission of the State, this Court held that while a hotel is a public place, a hotel room inside it is not a public place. This Court held thus:

> "Section 43, on plain reading of the Act, may not attract the rigours of Section 42 thereof. That means that even subjective satisfaction on the part of the authority, as is required under sub-section (1) of Section 42, need not be complied with, only because the place whereat search is to be made is a public place. If Section 43 is to be treated as an exception to Section 42, it is required to be strictly complied with … **It is also possible to contend that where a search is required to be made at a public place which is open to the general public, Section 42 would have no application but it may be another thing to contend that search is being made on prior information and there would be enough time for compliance of reducing the information to writing,**

> **informing the same to the superior officer and obtain his permission as also recording the reasons therefore coupled with the fact that the place which is required to be searched is not open to public although situated in a public place as, for example, room of a hotel, whereas hotel is a public place, a room occupied by a guest may not be. He is entitled to his right of privacy.** Nobody, even the staff of the hotel, can walk into his room without his permission. Subject to the ordinary activities in regard to maintenance and/or housekeeping of the room, the guest is entitled to maintain his privacy." [Emphasis supplied]

There is hence no substance in the first submission.

10 Section 50 of the Act deals with conditions under which search of persons shall be conducted. It states:

> "50. Conditions under which search of persons shall be conducted.—
>
> (1) When any officer duly authorised 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 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) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under

> section100 of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior."

According to Section 50(1), an empowered officer should necessarily inform the suspect about his legal right, if he so requires, to be searched in the presence of a gazetted officer or a magistrate. In **Vijaysinh Chandubha Jadeja** v **State of Gujarat** ("**Vijaysinh**"),[10] a Constitution Bench of this Court interpreted Section 50 thus:

> "The mandate of Section 50 is precise and clear, viz. if the person intended to be searched expresses to the authorised officer his desire to be taken to the nearest gazetted officer or the Magistrate, he cannot be searched till the gazetted officer or the Magistrate, as the case may be, directs the authorised officer to do so … 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. 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 … We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of Sub-

[10] (2011) 1 SCC 609.

> section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra)."

The principle which emerges from **Vijaysinh** is that the concept of "substantial compliance" with the requirement of Section 50 is neither in accordance with the law laid down in **Baldev Singh**, nor can it be construed from its language. [Reference may also be made to the decision of a two judge Bench of this Court in **Venkateswarlu**]. Therefore, strict compliance with Section 50(1) by the empowered officer is mandatory. Section 50, however, applies only in the case of a search of a person. In **Baldev Singh**, the Court held "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." In **State of Himachal Pradesh** v **Pawan Kumar** ("**Pawan Kumar**"),[11] a three judge Bench of this Court held that the search of an article which was being carried by a person in his hand, or on his shoulder or head, etc., would not attract Section 50. It was held thus:

> "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 …After the decision in Baldev Singh, this Court has consistently held that Section 50 would only apply to search of a person and not to any bag, article or container, etc. being carried by him."

In **Parmanand**, on a search of the person of the respondent, no substance was found. However, subsequently, opium was recovered from the bag of the respondent. A two judge Bench of this Court considered whether compliance

[11] (2005) 4 SCC 350.

with Section 50(1) was required. This Court held that the empowered officer was required to comply with the requirements of Section 50(1) as the person of the respondent was also searched. [Reference may also be made to the decision of a two judge Bench of this Court in **Dilip** v **State of Madhya Pradesh**][12]. It was held thus:

> "Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application."

Moreover, in the above case, the empowered officer at the time of conducting the search informed the respondent that he could be searched before the nearest Magistrate or before the nearest gazetted officer **or before the Superintendent**, who was also a part of the raiding party. The Court held that the search of the respondent was not in consonance with the requirements of Section 50(1) as the empowered officer erred in giving the respondent an option of being search before the Superintendent, who was not an independent officer. It was held thus:

> "We also notice that PW 10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before the nearest gazetted officer or before PW 5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW 5 J.S. Negi by PW 10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to the nearest Magistrate or the nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW 10 SI Qureshi to tell the

[12] (2007) 1 SCC 450.

> respondents that a third alternative was available and that they could be searched before PW 5 J.S. Negi, the Superintendent, who was part of the raiding party. PW 5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW 5 J.S. Negi, the search would have been vitiated or not. But PW 10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW 10 SI Qureshi is vitiated."

The question which arises before us is whether Section 50(1) was required to be complied with when *charas* was recovered only from the bag of the appellant and no *charas* was found on his person. Further, if the first question is answered in the affirmative, whether the requirements of Section 50 were strictly complied with by PW-2 and PW-4.

11 As evidenced by Exhibit-3, a first option was given to the appellant. PW-2 informed him that it was his legal right to be searched either in the presence of a magistrate or in the presence of a gazetted officer. The appellant was then asked to give his option by indicating whether he wanted to be searched by a magistrate or a gazetted officer. The appellant indicated that he wanted the search to be carried out in the presence of a gazetted officer. When PW-4 arrived, he was introduced to the detainee as a gazetted officer. As evidenced by Exhibit-4, PW-4 then gave the appellant a second option. He inquired of him again, whether he wanted to be searched in the presence of a gazetted officer or in the presence of a magistrate. The appellant reiterated his desire to be

searched in the presence of a gazetted officer. Before the search of the appellant commenced, the gazetted officer asked the appellant whether he wanted to search PW-2 before his own search was carried out by PW-2. The appellant agreed to search PW-2 before the latter carried out his search. On conducting the search, only personal belongings of PW-2 were found by the appellant. On the search of the appellant in the presence of the gazetted officer, a biscuit colour jute bag was recovered from the appellant, and Rs. 2,400/- cash in the denomination of 24 notes of Rs. 100/- each was found in the left pocket of the appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish / deep brown colour weighing 1.5 kilograms was recovered. The sheets were tested and were found to be *charas*.

PW-2 conducted a search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW-2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, Section 50 would be attracted in this case. Accordingly, PW-2 was required to comply with the requirements of Section 50(1). As soon as the search of a person takes place, the requirement of mandatory compliance with Section 50 is attracted, irrespective of whether contraband is recovered from the person of the detainee or not. It was, therefore, imperative for PW-2 to inform the appellant of his legal right to be searched in the presence of either a gazetted officer or a magistrate.

From Exhibit-3, it can be discerned that the appellant was informed of his legal right to be searched in the presence of a magistrate or a gazetted officer. The appellant opted for the latter alternative. Exhibit-4 is a record of the events after the arrival of PW-4 on the scene. After the arrival of PW-4, the appellant was once again asked by him, whether he wished to be searched in the presence of a gazetted officer or a magistrate. This was the second option which was presented to him. When he reiterated his desire to be searched before a gazetted officer, PW-4 inquired of the appellant whether he wished to search PW-2 before his own search was conducted by PW-2. The appellant agreed to search PW-2. Only the personal belongings of PW-2 were found by the appellant. It was only after this that a search of the appellant was conducted and *charas* recovered. Before the appellant's search was conducted, both PW-2 and PW-4 on different occasions apprised the appellant of his legal right to be searched either in the presence of a gazetted officer or a magistrate. The options given by both PW-2 and PW-4 were unambiguous. Merely because the appellant was given an option of searching PW-2 before the latter conducted his search, would not vitiate the search. In **Parmanand**, in addition to the option of being searched by the gazetted officer or the magistrate, the detainee was given a 'third' alternative by the empowered officer which was to be searched by an officer who was a part of the raiding team. This was found to be contrary to the intent of Section 50(1). The option given to the appellant of searching PW-2 in the case at hand, before the latter searched the appellant, did not vitiate the process in which a search of the appellant was conducted. The search of

the appellant was as a matter of fact conducted in the presence of PW-4, a gazetted officer, in consonance with the voluntary communication made by the appellant to both PW-2 and PW-4. There was strict compliance with the requirements of Section 50(1) as stipulated by this Court in **Vijaysinh**.

12 As we have already held that Section 50 was attracted in the present case, we do not need to decide on the applicability of **Namdi** to the facts of the present case. We have held that Section 50 was complied with. Having regard to the above position, we do not find any merit in the appeal.

13 The Criminal Appeal shall accordingly stand dismissed.

.....CJI
[DIPAK MISRA]

.....J
[Dr Dhananjaya Y Chandrachud]

.....J
[INDIRA BANERJEE]

New Delhi;
September 05, 2018.