HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

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CRIMINAL APPEAL No.765 of 2014

Between:

Vikram Malhotra @ Vicky ...Appellant

AND

The State of Telangana ...Respondent

DATE OF ORDER: 11th SEPTEMBER, 2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SMT. JUSTICE JUVVADI SRIDEVI

1	**Whether Reporters of Local newspapers may be allowed to see the Judgment?**	**Yes/No**
2	**Whether the copies of judgment may be marked to Law Reporters/Journals**	**Yes/No**
3	**Whether HER Lordship wish to see the fair copy of the Judgment?**	**Yes/No**

JUVVADI SRIDEVI, J

*** THE HONOURABLE SMT. JUSTICE JUVVADI SRIDEVI**

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% Date: 11TH September, 2026

Between:

Vikram Malhotra @ Vicky ...Appellant

AND

The State of Telangana ...Respondent

! Counsel for the Petitioner: Sri P. Krishna Prakash

! Counsel for the Respondent: Sri M. Vivekananda Reddy, learned Assistant Public Prosecutor for the State

>HEAD NOTE:

? Cases referred:

1. *1999) 6 Supreme Court Cases 172*
2. 2026 SCC OnLine SC 852

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

CRIMINAL APPEAL No.765 of 2014
(CNR No. HBHC010113902014)

Reserved on: 30.06.2026 **Pronounced on: 11.09.2026**
Uploaded on: 11.09.2026

Between:
Vikram Malhotra @ Vicky ...Appellant

AND

The State of Telangana ...Respondent

J U D G M E N T:

This Criminal Appeal is preferred against the impugned Judgment dated 10.07.2014 passed in S.C.No.727 of 2013 by the learned Metropolitan Sessions Judge, Hyderabad, whereby the appellant-accused No.2 was convicted for the offences under Sections 8(C) read with 21(b) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, and was sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.20,000/- each, in default to undergo Simple Imprisonment for a period of four months.

02. Heard Sri P. Krishna Prakash, learned counsel for the appellant-accused No.2 and Sri M. Vivekananda Reddy, learned Assistant Public Prosecutor for the State. Perused the record.

03.1. The case of the prosecution, in brief, is that on 11.12.2011 at about 10.00 a.m., PW.4, Inspector of Police, Panjagutta Police Station, received credible information that a Kenyan national was in possession of cocaine and was supplying the same to needy customers at the rate of Rs.2,500/- to Rs.3,500/- per gram. Believing the said information to be credible, PW.4 informed his immediate superior officer and requested PW.5, the Detective Inspector working in the same Police Station, to act as the Gazetted Officer for the purpose of conducting search and seizure. Thereafter, PW.4, PW.5 and other police personnel proceeded to the spot and took necessary precautions by concealing their presence.

03.2. At about 1.10 p.m., a foreign national got down from an auto near Civil Supplies Bhavan and started looking around. At that time, another person came out of a Skoda car which was waiting nearby and met the said foreign national. Both of them thereafter entered the said car. After about five minutes, when the foreign national got down from the car, the police personnel surrounded the car and apprehended both the persons. On enquiry, the apprehended persons disclosed their identities as

A.1 and A.2. They were informed of their legal right to have their persons searched before a Gazetted Officer. After they consented to such search, their persons were searched in the presence of PW.5, the Gazetted Officer, and two mediators secured by PW.4. During the search, nine small white packets, each containing about one gram of cocaine, along with cash of Rs.10,000/- and other articles, were allegedly found in the possession of A.1. Similarly, a polythene cover containing six small packets, each containing about one gram of cocaine, along with other articles, was allegedly recovered from the possession of A.2.

03.3. The police thereafter conducted a spot test, which indicated the presence of cocaine, and prepared a panchanama recording the proceedings of search and seizure. Subsequently, A.1 and A.2 were taken to the Police Station and formally arrested. The seized substance was sent to the Forensic Science Laboratory for chemical analysis. Upon receipt of the FSL report and completion of the investigation, the police filed a charge-sheet against A.1 and A.2 for the offences punishable under Section 8(c) read with Sections 21(b), 22(b) and 29 of the

Narcotic Drugs and Psychotropic Substances Act, 1985. In addition, A.1 was also charge-sheeted for the offences punishable under Section 14(c) read with Section 3(1) of the Foreigners Act.

03.4. Upon appearance of the accused before the learned trial Court, the case was taken cognizance of and the requisite legal formalities were complied with. On consideration of the material available on record, a charge for the offence punishable under Section 8(c) read with Sections 21(b) and 29 of the NDPS Act was framed against the accused facing trial. The charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

03.5. During the course of trial, the prosecution examined PW.1 to PW.7 and marked Exs.P.1 to P.17 and M.Os.1 to 8. The case against A.1 was split up and the A.2 was tried. After completion of the prosecution evidence, the accused was examined with regard to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses. He denied the said incriminating circumstances and did not adduce any evidence on his behalf.

03.6. After hearing both sides, the learned trial Court found the accused No.2 guilty and was convicted for the offences under Sections 8(C) read with 21(b) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, and was sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.20,000/- each, in default to undergo Simple Imprisonment for a period of four months.

04. Aggrieved thereby, the accused No.2 had preferred the present Criminal Appeal.

05.1. Learned counsel for the appellant-accused No.2 submitted that the impugned Judgment of conviction and sentence passed by the learned Sessions Judge is contrary to law, the weight of evidence on record and the probabilities of the case. Learned trial Court erred in convicting the appellant for the offence punishable under Section 8(c) read with Sections 21(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), as the essential ingredients of the said offences have not been established by the prosecution through cogent, reliable and legally admissible evidence.

05.2. It is further submitted that the learned trial Court committed an error in placing reliance upon the evidence of PWs.2 to 5 and 7, notwithstanding the material discrepancies and inconsistencies in their testimony. According to the learned counsel, the evidence of the said witnesses is neither consistent nor sufficient to establish the alleged possession of the contraband by the appellant beyond reasonable doubt. The learned trial Court ought to have appreciated the discrepancies and omissions in the evidence of the prosecution witnesses in their proper perspective and ought not to have based the conviction on such evidence.

05.3. It is further contended that the prosecution failed to comply with the mandatory safeguards prescribed under Section 50 of the NDPS Act. Learned counsel submitted that a common notice was allegedly served upon both the accused and Exs.P1 and P2 are stated to be copies of such notice. According to him, the statutory right contemplated under Section 50 of the NDPS Act is required to be communicated to each accused individually and there is no material to establish that a separate and proper notice was served upon the appellant. Such non-compliance, according to the learned counsel, vitiates the alleged search and seizure proceedings.

05.4. It is also contended that the provisions of Sections 42 and 57 of the NDPS Act were not duly complied with by the prosecution and that learned trial Court failed to consider the effect of such non-compliance. It is further submit that the Gazetted Officer allegedly present during the search belonged to the same department and, therefore, the purported compliance with Section 50 of the NDPS Act cannot be treated as a valid and independent compliance of the statutory safeguard.

05.5. It is further submitted that the independent mediators/panch witnesses did not support the case of the prosecution and were treated as hostile. In the absence of support from the independent witnesses, learned trial Court ought to have subjected the evidence of the official witnesses to close and cautious scrutiny, particularly when their evidence suffers from material discrepancies and inconsistencies.

05.6. It is also contended that there are several contradictions, inconsistencies and lapses in the statements of the prosecution witnesses with regard to the search, seizure and other material circumstances of the case. According to the learned counsel, such discrepancies are not merely minor or inconsequential, but go to the root of the prosecution case and create serious doubt regarding the manner in which the alleged contraband was recovered from the possession of the appellant.

05.7. It is further submitted that the prosecution failed to establish due compliance with Sections 52 and 55 of the NDPS Act relating to the handling, custody, sealing and safe preservation of the seized contraband. The failure to establish compliance with the statutory safeguards casts a serious doubt on the identity and integrity of the material allegedly seized from the appellant and, therefore, is fatal to the prosecution case.

05.8. It is further submitted that the reasons assigned by the learned trial Court for recording the conviction are unsustainable, contrary to the evidence on record and inconsistent with the settled principles governing criminal trials under the NDPS Act. The prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and, therefore, the appellant is entitled to the benefit of doubt and acquittal. Hence, he prayed that the impugned Judgment of conviction and sentence be set aside and the appellant/accused No.2 be acquitted of the charge levelled against him.

05.9. In support of his contentions, he relied upon a decision of the Hon'ble Supreme Court in ***State of Punjab v. Baldev Singh***[1] wherein it was held at Paragraph Nos.2, 25, 26, 28, 32, 35, 57 that:

> ***"2.*** *The batch of cases was thereafter listed before a three-Judge Bench. However, when the three-Judge Bench took up the matter, it was of the opinion that the judgment of a three-Judge Bench in Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat [(1995) 3 SCC 610 : 1995 SCC (Cri) 564] required reconsideration and, therefore, the cases were required to be considered still by a larger Bench and on 19-11-1997, the three-Judge Bench made the following order [State of Punjab v. Baldev Singh, (1998) 2 SCC 724 : 1998 SCC (Cri) 677] : (SCC pp. 725-26, paras 1-7)*
>
> *"1. In this bunch of appeals/special leave petitions the following questions of law (besides other questions of law and facts) fall for determination:*
>
> *(i) Is it the mandatory requirement of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, ('Act' for short) that when an officer, duly authorised under Section 42 of the Act, is about to search a person he must inform him of his right under sub-section (1) thereof of being taken to the nearest gazetted officer or nearest Magistrate for making the search?*
>
> *(ii) If any search is made without informing the person of his such right would the search be illegal even if he*

[1] *(1999) 6 Supreme Court Cases 172*

does not of his own exercise his right under Section 50(1)? and

(iii) Whether a trial held in respect of any recovery of contraband articles pursuant to such a search would be void ab initio?

2. The above questions came up for consideration before a two-Judge Bench of this Court in State of Punjab v. Balbir Singh [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] and it answered them as under: (SCC p. 322, para 25)

'25. (5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a gazetted officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the gazetted officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial.'
(emphasis supplied)

3. In Ali Mustaffa Abdul Rahman Moosa v. State of Kerala [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] a submission was made on behalf of the State of Kerala to reconsider the judgment in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] in view of the judgment of the Constitution Bench of this Court in Pooran Mal v. Director of Inspection (Investigation) [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] wherein it was observed that where the test of admissibility of evidence lay on relevancy (as in India and England), unless there was an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure was not liable to be shut out. Relying upon the above observation it was contended that even if the search and seizure of the contraband were held to be illegal and contrary to the provisions of Section 50 it *would not affect the conviction because the seized articles could be used as evidence of unlawful possession. In repelling this contention the two-Judge Bench of this Court observed as under: (SCC p. 572, paras 8-9)*

'The judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] only lays down that the evidence collected as a result of illegal search or seizure, could be used as evidence in proceedings against the party under the Income Tax Act. The judgment cannot be interpreted to lay down that a contraband seized as a result of illegal search or seizure, can be used to fasten that liability of unlawful possession of the contraband on the person from whom the contraband had allegedly been seized in an illegal manner. "Unlawful possession" of the contraband is the sine qua non for conviction under the NDPS Act and that factor has to be established by the prosecution beyond a reasonable doubt. Indeed the seized contraband is evidence but in the absence of proof of possession of the same, an accused cannot be held guilty under the NDPS Act.

In view of the law laid down in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] we hold that there has been violation of the provisions of Section 50 of the NDPS Act and consequently the conviction of the appellant cannot be sustained.'

4. The judgment in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] was affirmed by a three-Judge Bench in Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat [(1995) 3 SCC 610 : 1995 SCC (Cri) 564] .

5. A discordant note was however struck by a two-Judge Bench of this Court in State of H.P. v. Pirthi Chand [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] relying upon the judgment of this Court in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] when it held that the evidence collected in a search in violation of law did not become inadmissible in evidence under the Evidence Act. The Court further observed that even if the search was found to be in violation of law, what weight should be given to the evidence collected was a question to be gone into *during trial. The same view was reiterated by a two-Judge Bench in State of Punjab v. Labh Singh [(1996) 5 SCC 520 : 1996 SCC (Cri) 1036] with the observation that any evidence recorded and recovered in violation of the search and the contraband seized in violation of the mandatory requirement did not ipso facto invalidate the trial.*

(emphasis supplied)

6. In our considered opinion the judgment of this Court in Saiyad Mohd. Saiyad Umar Saiyad case [(1995) 3 SCC 610 : 1995 SCC (Cri) 564] (which was delivered by a three-Judge Bench) requires reconsideration and the questions formulated above answered by a larger Bench, not only in view of the subsequent judgments of this Court (delivered by a two-Judge Bench) referred to above, but also in view of the Constitution Bench judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] .

7. Let these matters be, therefore, placed before the Hon'ble Chief Justice for necessary orders."

*That is how this batch of criminal appeals/special leave petitions has been placed before this Constitution Bench. [**Ed.**: See also Namid Francis Nwazor v. Union of India, (1998) 8 SCC 657 : 1999 SCC (Cri) 81]*

***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 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 creditworthiness 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 sufficient if such information is communicated to the person concerned orally and as far as possible in the presence of some independent and respectable persons witnessing the arrest and search. The 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.*

26. *The safeguard or protection to be searched in the presence of a gazetted officer or a Magistrate has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain the veracity of evidence derived from such search. We have already noticed that severe punishments have been provided under the Act for mere possession of illicit drugs and narcotic substances. Personal search, more particularly for offences under the NDPS Act, are critical means of obtaining evidence of possession and it is, therefore, necessary that the safeguards provided in Section 50 of the Act are observed scrupulously. The duty to inform the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate is a necessary sequence for enabling the person concerned to exercise that right under Section 50 because after Maneka Gandhi v. Union of India [(1978) 1 SCC 248] it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not "reasonable, fair and just" and when a statute itself provides for a "just" procedure, it must be honoured.*

Conducting a search under Section 50, without intimating to the suspect that he has a right to be searched before a gazetted officer or a Magistrate, would be violative of the "reasonable, fair and just procedure" and the safeguard contained in Section 50 would be rendered illusory, otiose and meaningless. Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law, cannot be considered to be a "fair", just or reasonable procedure. We are not persuaded to agree that reading into Section 50, the existence of a duty on the part of the empowered officer, to intimate to the suspect, about the existence of his right to be searched in the presence of a gazetted officer or a Magistrate, if he so requires, would place any premium on ignorance of the law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a "reasonable, fair and just procedure".

***28.** This Court cannot overlook the context in which the NDPS Act operates and particularly the factor of widespread illiteracy among persons subject to investigation for drug offences. It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed. We are not able to find any reason as to why the empowered officer should shirk from affording a real opportunity to the suspect, by intimating to him that he has a right "that if he requires" to be searched in the presence of a gazetted officer or a Magistrate, he shall be searched only in that manner. As already observed the compliance with the procedural safeguards contained in Section 50 are intended to serve a dual purpose — to protect a person against false accusation and frivolous charges as also to lend creditability to the search and seizure conducted by the empowered officer. The argument that keeping in view the growing drug menace, an insistence on compliance with all the safeguards contained in Section 50 may result in more acquittals does not appeal to us. If the empowered officer fails to comply with the requirements* *of Section 50 and an order or acquittal is recorded on that ground, the prosecution must thank itself for its lapses. Indeed in every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted.*

32. *However, the question whether the provisions of Section 50 are mandatory or directory and, if mandatory, to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, we hold that the provisions of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty of the investigating officer (empowered officer) to ensure that search of the person (suspect) concerned is conducted in the manner prescribed by Section 50, by intimating to the person concerned about the existence of his right, that if he so requires, he shall be searched before a gazetted officer or a Magistrate and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate would cause prejudice to the accused and render the recovery of the illicit article suspect and vitiate the conviction and sentence of the accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered during a search conducted in violation of the provisions of Section 50 of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable.*

The protection provided in the section to an accused to be intimated that he has the right to have his personal search conducted before a gazetted officer or a Magistrate, if he so requires, is sacrosanct and indefeasible — it cannot be disregarded by the prosecution except at its own peril.

35. *A submission was made in Ali Mustaffa Abdul Rahman Moosa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] before the Bench on behalf of the State of Kerala to reconsider the judgment in Balbir Singh case in view of the judgment of this Court in Pooran Mal v. Director of Inspection (Investigation) [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] . It was urged in Ali Mustaffa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] that even if search and seizure of the contraband was held to be illegal having been conducted in violation of the provisions of Section 50, it could not affect the conviction because the recovered articles could still be used as "admissible evidence" under the Evidence Act to establish unlawful possession of the contraband on the person concerned from whom it was recovered during that search. This Court repelled that contention and held that the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] could not be read to have laid down that a contraband seized as a result of an illegal search or seizure could still be used as admissible evidence "of unlawful possession of the contraband on the person from whom the contraband had allegedly been seized in an illegal manner". The Bench in Ali Mustaffa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] observed: (SCC p. 572, para 8)*

"8. The last submission of the learned counsel for the respondents is that even if the search and seizure of the contraband are held to be illegal and contrary to the provisions of Section 50 of the NDPS Act, it would still not affect the conviction because the seized articles could be used as 'evidence' of unlawful possession of a contraband. Reliance for this submission is placed on the judgment of this Court in Pooran Mal v. Director of Inspection [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] .

We are afraid the submission is misconceived and the reliance placed on the said judgment is misplaced. The judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] only lays down that the evidence collected as a result of illegal search or seizure, could be used as evidence in proceedings against the party under the Income Tax Act. The judgment cannot be interpreted to lay down that a contraband seized as a result of illegal search or seizure, can be used to fasten that liability of unlawful possession of the contraband on the person from whom the contraband had allegedly been seized in an illegal manner. 'Unlawful possession' of the contraband is the sine qua non for conviction under the NDPS Act and that factor has to be established by the prosecution beyond a reasonable doubt. Indeed the seized contraband is evidence but in the absence of proof of possession of the same, an accused cannot be held guilty under the NDPS Act."

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

(1) That when an empowered officer or a duly authorised 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.

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(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.

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

(9) That the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.

(10) That the judgment in Ali Mustaffa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] correctly interprets and distinguishes the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] and the broad observations made in Pirthi Chand case [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] and Jasbir Singh case [(1996) 1 SCC 288 : 1996 SCC (Cri) 1] are not in tune with the correct exposition of law as laid down in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] ."

05.10. Further, he relied upon a decision of the Hon'ble Supreme Court in ***Talari Naresh v. State of Telangana***[2] wherein it was held at Paragraph Nos.6, 7.1, 7.5, 7.6, 8 that:

> ***"6.*** *The proposition is settled that the postmortem report by itself cannot be treated as a piece of substantive evidence. It needs to be corroborated by other oral evidence. In Ghulam Hassan Beigh v. Mohammad Maqbool Magrey*[3]*, the above position regarding the evidentiary value of the postmortem report was stated,*
>
> *'…The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those material…' (Para 31)*
>
> ***7.1.*** *Furthermore, it comes in the evidence of G. Udaya Kumar-PW10, the investigating police officer and Ashappa-PW6 who was a Panch witness as well as Narendar-PW3 who testified that the scene of offence was the main road, it was a place where quarries were located nearby and further that there*

[2] *2026 SCC OnLine SC 852*

was a vehicular traffic as trucks and lorries were used to pass day and night. It is only reasonable to believe that since the scene of offence was a public place on the main road humming with traffic, there would have been persons who had witnessed the incident. The prosecution however did not examine anybody from the nearby. This aspect gains significance, when as per the total oral evidence analysed herein, the very occurrence of the incident has slipped into a doubtful story.

***7.5.** It is true that the court is not expected to mechanically reject the evidence of a witness on the ground that the witness is a partisan witness or relative. This Court in Masalti v. State of Uttar Pradesh[4], speaking through a five judge bench, put a note of caution in appreciating the evidence given by an interested witness,*

***7.6.** The following observations could be applied in the present case,*

'… There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account…'

(Para-14)

***8.** In Bhaskarrao v. State of Maharashtra[5], this Court highlighted that a witness who has a strong interest in the result should not be allowed to be weighed on the same scales with those who do not have such interest in the outcome. Treating these two categories at par, stated the court, would open the doors for the court to arrive at a perverted or distorted truth. It was observed,*

'…This sound rule which remains the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no

> *dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour…' (Para-36)"*

06. On the other hand, the learned Assistant Public Prosecutor appearing for the State submitted that the accused had committed a grave offence and that the prosecution had succeeded in establishing the same before the learned trial Court beyond reasonable doubt. He further submitted that the learned trial Court, upon a proper appreciation of the oral and documentary evidence available on record, had rightly convicted and sentenced the accused for the offences punishable under Sections 8(c) read with 21(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It was contended that the impugned Judgment does not suffer from any illegality, irregularity or infirmity warranting interference by this Court. Therefore, the learned Assistant Public Prosecutor prayed that the Criminal Appeal be dismissed and the conviction and sentence imposed by the learned trial Court be confirmed.

07. Having regard to the submissions made by the learned counsel appearing for either side and upon careful perusal of the material available on record, the following points arise for consideration: whether the prosecution has established, beyond reasonable doubt, that the alleged contraband was recovered from the conscious, knowing and exclusive possession of the accused No.2; whether the prosecution has established due compliance with the statutory safeguards and mandatory procedural requirements governing the alleged personal search and seizure; whether the prosecution has established the commission of the offence punishable under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, against the accused No.2 beyond reasonable doubt; and whether the impugned Judgment of conviction and sentence recorded against the accused No.2 is sustainable in law and on facts, or whether it calls for interference by this Court in the present Criminal Appeal.

08. The prosecution principally relies upon the evidence of PW.2, PW.4 and PW.5, apart from the documentary and material evidence. PW.1 and PW.6 were cited as panch witnesses to the confession-cum-seizure proceedings. However,

both of them did not support the prosecution case and stated that they had been called to the Police Station, where two persons were shown to them, and that no proceedings had taken place in their presence. They further stated that their signatures were obtained on papers. Thus, the alleged independent witnesses did not corroborate the prosecution version regarding the search and seizure.

09. It is to be noted that the evidence of official witnesses cannot be discarded merely because they are police officials. However, where the independent witnesses have not supported the prosecution and the prosecution case rests substantially upon the testimony of interested or official witnesses, their evidence has to be examined with greater care and caution, particularly when material contradictions and procedural lapses are brought on record.

10. PW.2 stated that the accused No.1 arrived in an auto and the accused No.2 got down from the said auto, where after both entered the Skoda car. On the other hand, PW.4 stated that the Kenyan national got down from an autorickshaw and another person was waiting in the Skoda car, and that the latter

approached the Kenyan national. PW.5 also gave a version regarding the manner in which the two persons arrived at the spot. Though every discrepancy need not necessarily demolish a prosecution case, the discrepancies in the present case assume significance because the prosecution seeks to establish a particular transaction followed by immediate personal search and recovery of contraband. The very circumstances in which the accused came to the spot, met each other and entered the car constitute the foundation for the prosecution allegation of their involvement in drug trafficking.

11. More importantly, PW.4 admitted in cross-examination that the panchanama did not mention that the contraband had been recovered from the pocket of the accused. He also admitted that no independent witness from the locality was examined even though about 20 to 25 persons had gathered at the time of the panchanama. No explanation, much less a convincing explanation, is forthcoming as to why none of those persons was secured as a witness. This omission assumes considerable significance in a case where the entire prosecution

case rests upon an alleged recovery of contraband from the person of the accused.

12. The alleged recovery from the accused No.2 is a personal search recovery. Therefore, the safeguard contained in Section 50 of the NDPS Act assumes considerable importance. PW.4 admitted that Ex.P.1, stated to be the notice under Section 50 of the NDPS Act, was a common notice served upon both accused on the ground that they were together. PW.5 also admitted that he did not know whether separate notices were required to be served upon each accused. The statutory right under Section 50 is a valuable safeguard available to a person whose body is proposed to be searched. In *State of Punjab v. Baldev Singh*, the Hon'ble Supreme Court emphasised that the person to be searched must be informed of his right to have the search conducted before a Gazetted Officer or a Magistrate and that compliance with the safeguard has to be established by the prosecution on the basis of the evidence adduced at trial. The Hon'ble Supreme Court further observed that failure to comply with the safeguard may render the recovery suspect and the conviction unsustainable where the conviction is founded upon

the possession of the illicit material recovered during such search.

13. The significance of the safeguard becomes greater in the present case because the prosecution itself has introduced uncertainty as to the manner of communication of the right. PW.4 admitted that a common notice was served upon both accused. PW.5 admitted that he did not know whether separate notices were required. The prosecution has thus failed to place before the Court satisfactory and convincing evidence establishing that the statutory right of the accused No.2 was individually and meaningfully communicated to him before his personal search.

14. It is not sufficient for the prosecution merely to assert that the accused "opted" for search before a Gazetted Officer. The prosecution must establish that such option was exercised after the accused was duly informed of the right contemplated by Section 50. The evidence of PW.5 also shows that the alleged Gazetted Officer was from the same police department and that the notice allegedly issued to him to act as Gazetted Officer was not produced before the Court. In the facts of the present case, therefore, the prosecution has failed to establish compliance with

the safeguard in a manner sufficient to remove reasonable doubt surrounding the alleged personal search and recovery.

15. The prosecution admittedly had an opportunity to secure independent witnesses. PW.4 admitted that the place of occurrence was a busy locality and that 20 to 25 persons had gathered at the time of the panchanama. Nevertheless, none of those persons was examined. The two panch witnesses examined by the prosecution did not support the seizure proceedings. Consequently, the prosecution case regarding the actual recovery rests substantially upon the police witnesses. This Court is conscious that conviction can be based on the testimony of official witnesses if such testimony is cogent, consistent and trustworthy. However, in the present case, the official evidence is not free from material infirmities. There are inconsistencies regarding the manner in which the accused came to the spot, omissions regarding the exact place and manner of recovery, absence of independent corroboration despite its ready availability, and deficiencies concerning the documentation of the proceedings.

16. The principle that evidence of interested witnesses must be examined with caution is well settled. The Court has to consider whether the testimony is consistent, probable and supported by surrounding circumstances. The material relied upon by the appellant also emphasises this principle. PW.4 admitted several significant omissions in the documentation of the proceedings. He admitted that the descriptive particulars of the accused No.1 were not furnished in the initial information; the common Section 50 notice did not contain such particulars; the direction in which the car was proceeding and its colour were not mentioned in the panchanama; the panchanama did not mention that the contraband had been recovered from the pocket of the accused; no statement of any independent witness was recorded at the spot; no rough sketch was prepared; and no photographs or videography of the proceedings were taken.

17. PW.5, in turn, admitted that the exact place of the panchanama was not mentioned, that the notice allegedly issued to him to act as Gazetted Officer was not filed, that the place of offence was not mentioned in Ex.P.15, and that the mediators had accompanied the police party from the Police Station. He

further admitted that the police did not enquire about the language known to the accused and that the date was not mentioned on pages 1 to 3 of the panchanama. These omissions, considered individually, may not necessarily be fatal. However, criminal cases under the NDPS Act require strict scrutiny because the consequences of conviction are serious and the statutory safeguards are intended to protect against false implication and unreliable recovery. The cumulative effect of the aforesaid circumstances cannot be ignored.

18. The fundamental requirement for sustaining a conviction under Section 21(b) of the NDPS Act is proof of possession of the contraband. The prosecution must establish the factum of possession beyond reasonable doubt before any statutory presumption can operate against the accused. The Hon'ble Supreme Court in *State of Punjab v. Baldev Singh* has emphasised that unlawful possession of contraband is the sine qua non for conviction under the NDPS Act and that the prosecution must establish such possession beyond reasonable doubt. In the present case, the alleged contraband said to have been recovered from the accused No.2 consists of six small

packets. PW.2 stated that they were found with the accused No.2, while PW.4 also claimed recovery of six sachets from him. However, the panch witnesses did not corroborate the recovery. Further, the panchanama itself does not record the crucial circumstance that the contraband was recovered from the pocket/person of the accused No.2, as admitted by PW.4.

19. The prosecution has also not produced any convincing independent circumstance connecting the accused No.2 with the alleged contraband so as to eliminate the reasonable possibility of doubt concerning the recovery. The evidence of the spot test also does not, by itself, establish possession. PW.2 admitted that the spot test was only a preliminary test. The chemical examination may establish the nature of the substance contained in the samples, but it cannot by itself establish that the substance was recovered from the conscious and exclusive possession of the accused No.2.

20. The appellant was also convicted with the aid of Section 29 of the NDPS Act. Section 29 concerns abetment and criminal conspiracy. Mere presence of two persons at the same place or their entering the same vehicle, by itself, cannot

establish a criminal conspiracy unless there is reliable evidence indicating a meeting of minds or participation in the alleged criminal offence. In the present case, apart from the alleged recovery, there is no independent and reliable evidence establishing that the accused No.2 entered into any agreement or conspiracy with the accused No.1 for possessing, selling or otherwise dealing with cocaine. The prosecution relies upon the alleged confession-cum-seizure proceedings. However, the independent mediators have not supported those proceedings. Further, the prosecution has not brought on record any independent circumstance showing the existence of a prior agreement or concert between both the accused. Consequently, the essential ingredients of Section 29 are also not established beyond reasonable doubt.

21. The Court is not oblivious to the fact that offences under the NDPS Act are serious in nature and that illicit trafficking in narcotic drugs poses a serious threat to society. Nevertheless, seriousness of the offence cannot dispense with the fundamental requirement that the prosecution must prove the guilt of the accused beyond reasonable doubt and must comply with the

safeguards prescribed by law. As observed by the Hon'ble Supreme Court in *State of Punjab v. Baldev Singh*, the procedural safeguards incorporated in Section 50 serve the important purpose of protecting an accused against false accusation and lending credibility to the search and seizure proceedings. The means adopted by the investigating agency must remain above board. In the present case, the following circumstances cumulatively create a serious and reasonable doubt: (i) the independent panch witnesses did not support the prosecution case; (ii) despite the alleged occurrence having taken place in a busy public locality and despite the presence of 20 to 25 persons, no independent local witness was examined; (iii) a common Section 50 notice was admittedly served upon both accused; (iv) the prosecution failed to establish satisfactorily that the statutory right of the accused No.2 was individually and effectively communicated to him; (v) the panchanama did not record the crucial circumstance that the contraband was recovered from the pocket/person of the accused No.2; (vi) there are material inconsistencies in the evidence regarding the manner in which the accused arrived at and entered the vehicle; (vii) several material particulars concerning the place and manner of seizure were not recorded in the contemporaneous documents; (viii) the spot test was admittedly only preliminary and, by itself, cannot establish possession; and (ix) there is no independent evidence establishing the alleged conspiracy between the accused Nos.1 and 2. These circumstances cannot be brushed aside as mere minor discrepancies. They affect the very foundation of the prosecution case, namely, the alleged recovery of contraband from the conscious possession of the accused No.2.

22. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. Where the evidence gives rise to a reasonable doubt as to the guilt of the accused, such doubt must necessarily enure to his benefit. In the present case, the prosecution was required to establish, by reliable and cogent evidence, that the contraband was recovered from the conscious possession of the accused No.2 and that he was involved in the alleged offence. Having regard to the deficiencies and inconsistencies discussed above, this Court is unable to hold that the prosecution has discharged that burden beyond reasonable doubt. Therefore, this Court is of the considered view that the learned trial Court, did not sufficiently

appreciate the effect of the hostile panch witnesses, the admissions elicited from PW.4 and PW.5 in cross-examination, the deficiencies in the Section 50 proceedings and the absence of independent corroboration. The findings recorded by the learned trial Court, therefore, cannot be sustained and the appellant/accused No.2 is entitled to the benefit of doubt.

23. For the foregoing reasons, this Court is of the considered view that the prosecution has failed to prove the guilt of the appellant/accused No.2 for the offences punishable under Sections 8(c) read with 21(b) and 29 of the NDPS Act beyond reasonable doubt. The impugned Judgment of conviction and sentence dated 10.07.2014 passed in S.C.No.727 of 2013 by the learned Metropolitan Sessions Judge, Hyderabad, is therefore liable to be set aside.

24. Accordingly, this Criminal Appeal is allowed. The Judgment of conviction and sentence dated 10.07.2014 passed by the learned Metropolitan Sessions Judge, Hyderabad, in S.C.No.727 of 2013, convicting the appellant/accused No.2 for the offences punishable under Sections 8(c) read with 21(b) and 29 of the NDPS Act, is hereby set aside. The appellant/accused

No.2 is hereby acquitted of the said offences by extending to him the benefit of doubt. The fine amount, if any, paid by the appellant shall be refunded to him in accordance with law. The bail bonds, if any, shall stand cancelled, subject to the requirement under Section 437-A Cr.P.C. The material objects shall be dealt with in accordance with law, after expiry of the period prescribed for preferring an appeal/revision, if any.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUVVADI SRIDEVI, J

Date: 11-SEP-2026
KHRM