State Of Delhi vs Ram Avtar @ Rama on 7 July, 2011

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Bench: Swatanter Kumar, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1101 OF 2004

State of Delhi ... Appellant

Versus

Ram Avtar @ Rama ... Respondent

J U D G M E N T

Swatanter Kumar J.

Ingenuity of counsel sometimes results in formulation propositions, which appear at the first flush to be legally sound and relatable to recognized cannons of criminal jurisprudence. When examined in greater depth, their rationale is nothing but illusory; and the argument is without substance. One such argument has been advanced in the present case by the learned counsel appearing for the appellant who contends that `even where the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as `the Act') have not been complied with the recovery can otherwise be proved without solely relying upon the personal search of the accused'.

According to the learned counsel, the courts are required to take into consideration evidence of recovery of illicit material independently of the factum of personal search of the accused as stated by other witnesses as such evidence would be admissible and can form the basis for conviction of an accused in accordance with law.

Before we notice the judgments which have been referred to on behalf of the State, it will be necessary for us to refer to the facts giving rise to the present appeal. On 18th January, 1998 at about 8.15 a.m., a secret informer met Assistant Sub Inspector (ASI) - Dasrath Singh (who was examined as PW8) and informed him that a person by the name of Ram Avtar @ Rama resident of House No. 71/144, Prem Nagar, Choti Subzi Mandi, Janakpuri would be going to his house on a two wheeler scooter No. DL 4SL 2996 and if the said person was searched and raid was conducted, smack could be recovered from him. This information was passed on by ASI-Dasrath Singh, to the Station House Officer (SHO) M.C. Sharma (who was examined as PW4), on telephone, who in turn directed R.P. Mehta, Assistant Commissioner of Police (Narcotics Bureau) ACP(NB) to conduct the raid immediately. The secret information was recorded in the DD at Sl. No.3. In furtherance to this at around 8.30 A.M., ASI Dasrath Singh along with Sub Inspector (SI) Sahab Singh, Head Constable Narsingh, Constable Manoj Kumar, Lady Constable Nirmla and the informer left for the spot in a Government vehicle. The vehicle was parked in a hideout at some distance. At around 9.30 a.m. Ram Avtar was apprehended based on pointing out by the informer while he was coming on a two wheeler scooter from the side of the main road, Tilak Nagar near his house. It is the case of the prosecution that a police officer in the raiding party had requested some persons, who were passing by, to join the raid but they declined to do so on some ground or the other. The police officer then served a notice Ex. PW6/A in writing, under Section 50 of the Act upon the appellant but he declined to be searched either in presence of a Gazetted Officer or a Magistrate. On search, three polythene packets were recovered from left side pocket of his shirt. On opening the packets, it was found to contain powder of light brown colour, suspected to be smack. This recovered powder was mixed together. The total weight of the recovered powder was 16 grams, out of which 5 grams were separated as sample.

Both the sample and the remaining powder were converted into two parcels and sealed with the seal of DS which were the initials of PW8. CFSL Form was filled and seal of DS also affixed thereon. Parcels were seized vide memo Ex. PW-2/8.

PW8 sent the parcels, CFSL Form and copy of rukka, Ex.PW-

5/8 through Constable Manoj Kumar to Station House Officer (PW4) for recording an FIR under Section 21 of the Act. The samples, rukka etc. are now produced in carbon copy as Ex.PW-5/A. Sample parcels were sent to CFSL, Chandigarh and as per their report, the sample gave positive test for diacetylmorphine (heroin). Resultantly, Ram Avtar was taken into custody, and charge-sheet for committing an offence under Section 21 of the Act was filed against him.

As many as eight witnesses were examined by the prosecution to bring home the guilt against the accused. In his statement under Section 313 of the Cr.P.C., the plea taken by the accused was that on the day of occurrence his house was searched without a valid warrant and as nothing was recovered therefrom, he demanded a "no recovery certificate".

He claims that the police misbehaved and that he was taken to the Police Station, Narcotic Branch on the pretext of issuing such "no recovery certificate". He claims to have been falsely implicated in this case. The accused had taken a specific objection, with regard to non-compliance with the provisions of Section 50 of the Act, and had laid down this defense before the Trial Court. The Trial Court was of the opinion that the prosecution has been able to prove the case beyond any reasonable doubt and therefore, convicted the accused and sentenced him to undergo rigorous imprisonment of ten years and pay a fine of Rs.1,00,000/-; in default thereof, further undergo one year of rigorous imprisonment.

An appeal was preferred by the accused challenging the conviction and order of sentence dated 19th July, 1999. The High Court after taking note of the notice that was alleged to have been issued to the accused under Section 50 of the Act, Ex.PW-6/A, returned a finding in accordance with settled principles of law, that the notice provided to the accused was not in conformity with the provisions of Section 50 of the Act.

Resultantly, there was no compliance with the provisions of Section 50 of the Act in the eyes of law and therefore, the accused was acquitted of the charge. The State of Delhi feeling aggrieved by the order of the High Court filed the present appeal.

We have already noticed that the High Court primarily discussed only one issue, i.e. whether there was compliance with the provisions of Section 50 of the Act or not; and had answered this in the negative, against the State. The primary submission raised in the present appeal also relates to the interpretation of the provisions of Section 50 of the Act. In order to examine the merit of the contention raised on behalf of the appellant, at the outset, it will be appropriate for us to refer to the precedents on the issue of the principles applicable to Section 50 of the Act.

One of the earliest and significant judgments of this Court, on the issue before us is the case of State of Punjab v.

Balbir Singh, [(1994) 3 SCC 299] where the Court considered an important question i.e., whether failure by the empowered or authorized officer to comply with the conditions laid down in Section

50 of the Act while conducting the search, affects the prosecution case. In para 16 of the said judgment, after referring to the words "if the person to be searched so desires", the Court came to the conclusion that a valuable right has been given to the person, to be searched in the presence of the Gazetted Officer or Magistrate if he so desires. Such a search would impart much more authenticity and creditworthiness to the proceedings, while equally providing an important safeguard to the accused. It was also held that to afford this opportunity to the person to be searched, such person must be fully aware of his right under Section 50 of the Act and that can be achieved only by the authorized officer explicitly informing him of the same. The statutory language is clear, and the provisions implicitly make it obligatory on the authorized officer to inform the person to be searched of this right. Recording its conclusion in para 25 of the judgment, the Court clearly held that non-compliance with Section 50 of the Act, which is mandatory, would affect the prosecution case and vitiate the trial. It also noticed that after being so informed, whether such person opted for exercising his right or not would be a question of fact, which obviously is to be determined on the facts of each case.

This view was followed by another Bench of this Court in the case of Ali Mustaffa Abdul Rahman Moosa v. State of Kerala, [(1994) 6 SCC 569], wherein the Court stated that the searching officer was obliged to inform the person to be searched of his rights. Further, the contraband seized in an illegal manner could hardly be relied on, to the advantage of the prosecution. Unlawful possession of the contraband is the sine qua non for conviction under the NDPS Act, and that factor has to be established beyond any reasonable doubt. The Court further indicated that articles recovered may be used for other purposes, but cannot be made a ground for a valid conviction under this Act.

In the case of Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat, [(1995) 3 SCC 510], the Court followed the principles stated in Balbir Singh's case (supra) and also clarified that the prosecution must prove that the accused was not only made aware of his right but also that the accused did not choose to be searched before a Gazetted Officer or a Magistrate.

Then the matter was examined by a Constitution Bench of this Court, in the case of State of Punjab v. Baldev Singh [(1999) 6 SCC 172], where the Court, after detailed discussion on various cases, including the cases referred by us above, recorded its conclusion in para 57 of the judgment . The relevant portions of this conclusion are as under:

> "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.

XXX XXX XXX (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.

XXX XXX XXX (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."

Still in the case of Ahmed v. State of Gujarat, [(2000) 7 SCC 477), a Bench of this Court followed the above cases including Baldev Singh's case (supra) and held that even where search is made by empowered officer who may be a Gazetted Officer, it remains obligatory for the prosecution to inform the person to be searched about his right to be taken to the nearest Gazetted Officer or Magistrate before search. In this case, the Court also noticed at sub-para (e) at page 482 of the judgment that the provisions of Section 50 of the Act, which afford minimum safeguard to the accused, provide that when a search is about to be made of a person under Section 41 or Section 42 or Section 43 of the Act, and if the person so requires, then the said person has to be taken to the nearest Gazetted Officer of any department mentioned in Section 42 of the Act or to the nearest Magistrate.

In the case of K. Mohanan v. State of Kerala, [(2010) 10 SCC 222] another Bench of this Court while following Baldev Singh's case (supra) stated in unambiguous terms that merely asking the accused whether he wished to be searched before a Gazetted Officer or a Magistrate, without informing him that he enjoyed a right under law in this behalf, would not satisfy the requirements of Section 50 of the Act.

We may also notice here that some precedents hold that though a right of the person to be searched existed under Section 50 of the Act, these provisions are capable of substantial compliance and compliance in absolute terms is not a requirement under law. Reference in this regard can be made to Joseph Fernandez v. State of Goa, [(2000) 1 SCC 707], Prabha Shankar Dubey v. State of Madhya Pradesh, [(2004) 2 SCC 56], Krishna Kanwar v. State of Rajasthan, [(2004) 2 SCC 608, Manohar Lal

v. State of Rajasthan, [(1996) 11 SCC 391], Karnail Singh v. State of Haryana, [(2009) 8 SCC 539]. In the case of Prabha Shankar Dubey (supra), this Court while referring to Baldev Singh's case (supra) took the view that Section 50 of the Act in reality provides additional safeguards which are not elsewhere provided by the statute. As the stress is on the adoption of reasonable, fair and just procedure, no specific words are necessary to be used to convey the existence of this right. The notice served, in that case, upon the person to be searched was as follows: `By way of this notice you are informed that we have received information that you are illegally carrying opium with you, therefore, we are required to search your scooter and you for this purpose. You would like to give me search or you would like to be searched by any gazetted officer or by a Magistrate?' Keeping the afore-referred language in mind, the Court applied the principle of substantial compliance, and held that the plea of non-

compliance with the requirements of Section 50 of the Act was without merit on the facts of that case. The Court held as under:

> "12. The use of the expression "substantial compliance" was made in the background that the searching officer had Section 50 in mind and it was unaided by the interpretation placed on it by the Constitution Bench in Baldev Singh case. A line or a word in a judgment cannot be read in isolation or as if interpreting a statutory provision, to impute a different meaning to the observations.
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> 13. Above being the position, we find no substance in the plea that there was non-compliance with the requirements of Section 50 of the Act."

Similarly, in Manohar Lal's case (supra) the option provided to the accused, not to go to a Magistrate if so desired, was considered to imply requirement of mere substantial compliance; and that strict compliance was not necessary.

In the case of Union of India v. Satrohan, [(2008) 8 SCC 313] though the Court was not directly concerned with the interpretation of the provisions of Section 50 of the Act, the Court held that Section 42(2) of the Act was mandatory. It also held that search under Section 41(1) of the Act would not attract compliance to the provisions of Section 50 of the Act.

To that extent this judgment was taking a view different from that taken by the equi-Bench in Ahmed's case (supra). This question to some extent has been dealt with by the Constitution Bench in the case of Vijaysinh Chandubha Jadeja v. State of Gujarat [(2011) 1 SCC 609] (hereinafter referred to as `Vijaysinh Chandubha Jadeja'). As this question does not arise for consideration before us in the present case, we do not consider it necessary to deliberate on this aspect in any further detail.

In the case of Vijaysinh Chandubha Jadeja v. State of Gujarat, [(2007) 1 SCC 433], a three Judge Bench of this Court had taken the view that the accused must be informed of his right to be searched in presence of a Magistrate and/or a Gazetted Officer, but in light of some of the judgments we have mentioned above, a reference to the larger bench was made, resulting.

Accordingly, a Constitution Bench was constituted and in the case of Vijaysinh Chandubha Jadeja (supra) of this Court, referring to the language of Section 50 of the Act, and after discussing the above-mentioned judgments of this Court, took the view that there was a right given to the person to be searched, which he may exercise at his option. The Bench further held that substantial compliance is not applicable to Section 50 of the Act as its requirements were imperative. The Court, however, refrained from specifically deciding whether the provisions were directory or mandatory. It will be useful to refer the relevant parts of the Constitution Bench in Vijaysinh Chandubha Jadeja (supra). In para 23, the Court said `In the above background, we shall now advert to the controversy at hand. For this purpose, it would be necessary to recapitulate the conclusions, arrived at by the Constitution Bench in Baldev Singh case'. After further referring to the conclusions arrived at by the Constitution Bench in Baldev Singh's case (supra) (which have been referred by us in para 9 of this judgment) and reiterating the same the Constitution Bench in Vijaysinh Chandubha Jadeja (supra) this case concluded as under:

> "31. 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 and Prabha Shankar Dubey is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh case. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf."

Analysis of the above judgments clearly show that the scope of the provisions of Section 50 of the Act are no more res integra and stand concluded by the above judgments particularly the Constitution Bench judgments of this Court in the cases of Baldev Singh (supra) and Vijaysinh Chandubha Jadeja (supra).

In the present case, we are concerned with the provisions of Section 50 of the Act as it was, prior to amendments made by Amending Act 9 of 2001 w.e.f. 2.10.2001. In terms of the provisions, in force at the relevant time, the petitioner had a right to be informed of the choice available to him; making him aware of the existence of such a right was an obligation on the part of the searching officer. This duty cast upon the officer is imperative and failure to provide such an option, in accordance with the provisions of the Act, would render the recovery of the contraband or illicit substance illegal.

Satisfaction of the requirements in terms of Section 50 of the Act is sine qua non prior to prosecution for possession of an unlawful narcotic substance.

In fact, the Constitution Bench in the case of Vijaysinh Chandubha Jadeja (supra), in para 25, has even taken a view that after the amendment to Section 50 of the Act and the insertion of sub-section 5, the mandate of Section 50(2) of the Act has not been nullified, and the obligation upon the searching officer to inform the person searched of his rights still remains. In other words, offering the option to take the person to be searched before a Gazetted Officer or a Magistrate as contemplated under the provisions of this Act, should be unambiguous and definite and should

inform the suspect of his statutory safeguards.

Having stated the principles of law applicable to such cases, now we revert back to the facts of the case at hand.

There is no dispute that the concerned officer had prior intimation, that the accused was carrying smack, and the same could be recovered if a raid was conducted. It is also undisputed that the police party consisting of ASI - Dasrath Singh, Head Constable- Narsingh, Constable - Manoj Kumar and lady constable-Nirmla had gone in a Government vehicle to conduct the raid. The vehicle was parked and the accused, who was coming on a scooter, had been stopped. He was informed of and a notice in writing was given to him of, the suspicions of the police, that he was carrying smack. They wanted to search him and, therefore, informed him of the option available to him in terms of Section 50 of the Act. The option was given to the accused and has been proved as Ex.

PW-6/A, which is in vernacular. The High Court in the judgment under appeal has referred to it and we would prefer to reproduce the same, which reads as under :

> "Musami Ram Avtar urf Rama S/o late Sh. Mangat Ram R/o 71/144, Prem Nagar, Choti Subzi Mandi, Janakpuri, Delhi, apko is notice ke tehat suchit kiya jata hai ki hamare pas itla hai ki apko kabje me smack hai aur apki talashi amal mein laye jati hai. Agar ap chahen to apki talashi ke liye kisi Gazetted officer ya Magistrate ka probandh kiya ja sakta hai."

The High Court while relying upon the judgment of this Court in the case of Baldev Singh (supra) and rejecting the theory of substantial compliance, which had been suggested in the case of Joseph Fernandez (supra), found that the intimation did not satisfy the provisions of Section 50 of the Act. The Court reasoned that the expression `duly' used in Section 50 of the Act connotes not `substantial' but `exact and definite compliance'. Vide Ex.PW-6/A, the appellant was informed that a Gazetted Officer or a Magistrate could be arranged for taking his search, if he so required. This intimation could not be treated as communicating to the appellant that he had a right under law, to be searched before the said authorities. As the recovery itself was illegal, the conviction and sentence has to be set aside.

It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance thereto should be strictly construed. As already held by the Constitution Bench in the case of Vijaysinh Chandubha Jadeja (supra), the theory of `substantial compliance' would not be applicable to such situations, particularly where the punishment provided is very harsh and is likely to cause serious prejudices against the suspect. The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance thereof must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given

to the suspect. If such information is incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act. Non-compliance of the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial. To secure a conviction under Section 21 of the Act, the possession of the illicit article is a sine qua non. Such contraband article should be recovered in accordance with the provisions of Section 50 of the Act, otherwise, the recovery itself shall stand vitiated in law. Whether the provisions of Section 50 of the Act were complied with or not, would normally be a matter to be determined on the basis of the evidence produced by the prosecution. An illegal search cannot entitle the prosecution to raise a presumption of validity of evidence under Section 50 of the Act. As is obvious from the bare language of Ex.PW-6/A, the accused was not made aware of his right, that he could be searched in the presence of Gazetted Officer or a Magistrate, and that he could exercise such choice. The writing does not reflect this most essential requirement of Section 50 of the Act. Thus, we have no hesitation in holding that the judgment of the High Court does not suffer from any infirmity.

Now, we come to discuss the argument raised on behalf of the State, that in the present case, generally and as a proposition of law, even if there is apparent default in compliance with the provisions of Section 50 of the Act, a person may still be convicted if the recovery of the contraband can be proved by statements of independent witnesses or other responsible officers, in whose presence the recovery is effected. To us, this argument appears to be based upon not only a misconstruction of the provisions of Section 50 of the Act but also on the mis-conception of the principles applicable to criminal jurisprudence. Once the recovery itself is found to be illegal, being in violation to the provisions of Section 50 of the Act, it cannot, on the basis of the statement of the police officers, or even independent witnesses, form the foundation for conviction of the accused under Section 21 of the Act.

Once the recovery is held to be illegal, that means the accused did not actually possess the illicit article or contraband and that no such illicit article was recovered from the possession of the accused such as to enable such conviction of a contraband article.

We are also unable to appreciate how the provisions of Section 50 of the Act can be read to support such a contention. The language of the provision is plain and simple and has to be applied on its plain reading as it relates to penal consequences. Section 50 of the Act states the conditions under which the search of a person shall be conducted. The significance of this right is clear from the language of Section 50(2) of the Act, where the officers have been given the power to detain the person until he is brought before a Gazetted Officer or Magistrate as referred to in sub-section (1) of Section 50 of the Act. Obviously, the legislative intent is that compliance with these provisions is imperative and not merely substantial compliance. Even in the case of Ali Mustaffa Abdul Rahman Moosa (supra), this Court clearly stated that contraband seized as a result of search made in contravention to Section 50 of the Act, cannot be used to fasten the liability of unlawful possession of 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 Act. In the case of Ali Mustaffa Abdul Rahman Moosa (supra), this Court had considered the observation made by a Bench of this Court, in an earlier judgment, in the case of Pooran Mal v.

Director of Inspection [(1974) 1 SCC 345] which had stated 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 Court, while examining this principle, clearly held that even this judgment cannot be interpreted to lay down that contraband seized as a result of illegal search or seizure can be used to fasten the 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, under the Act, is a factor that has to be established by the prosecution beyond any 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 Act.

What the learned counsel for the appellant has argued is exactly to the contrary. According to him, even if the recovery was in violation of Section 50 of the Act, the accused should be held guilty of unlawful possession of contraband, on the basis of the statement of the witnesses. Once the recovery itself is made in an illegal manner, its character cannot be changed, so as to be admissible, on the strength of statement of witnesses. What cannot be done directly cannot be permitted to be done indirectly. If Ex.PW-6/A is not in conformity with the provisions of Section 50 of the Act, then there is patent violation of the provisions. Firstly, in the present case, there is no public witness to Ex.PW-6/A; and the recovery thereof; secondly, even the evidence of all the witnesses, who are police officers, does not improve the case of the prosecution. The defect in Ex.PW-6/A is incurable and incapable of being construed as compliance with the requirements of Section 50 of the Act on the strength of ocular statement.

The Constitution Bench, in the case of Vijaysinh Chandubha Jadeja (supra) had spelt out the effects of failure to comply with the mandatory provisions of Section 50 of the Act, being (A) cause of prejudice to the suspect accused; (B) rendering recovery of illicit article suspect and thereby, vitiating the conviction, if the same is recorded only on the basis of recovery of illicit article from the person of the accused during such search.

The learned counsel for the appellant relied on the use of the words `only on the basis of the recovery' used in para 29 of that judgment, to contend that if there is other supporting evidence of recovery, the conviction cannot be set aside. This submission is nothing but based upon a misreading of the judgment; not only of para 29 but the judgment in its entirety.

What the Constitution Bench has stated is that where the recovery is from the person of the suspect, and that recovery is found to be illegal, the conviction must be set aside as the principles applicable to personal recovery are somewhat different from recovery of contraband from a vehicle or a house.

In para 29 of the judgment itself, the Bench has held that `we have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section(1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance.' In fact the contention raised by the appellant has, in specific terms, been rejected by the Constitution Bench in clause 7 of para 23 of the judgment.

The Court clearly held 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 the accused, notwithstanding the recovery of that material during an illegal search. The proposition of law having been so clearly stated, we are afraid that no argument to the contrary may be entertained. What needs to be understood is that an illegal recovery cannot take the colour of a lawful possession even on the basis of oral evidence. But if any other material which is recovered is a subject matter in some co-lateral or independent proceeding, the same could be proved in accordance with law even with the aid of such recovery. But in no event the illegal recovery can be the foundation of a successful conviction under the provisions of Section 21 of the Act.

For the reasons afore recorded, we do not find any merit in the present appeal. The same stands dismissed without any order as to costs.

.....J. [Dr. B.S. Chauhan] .....J. [Swatanter Kumar] New Delhi;

July 7, 2011