State Of West Bengal And Ors vs Babu Chakraborty on 2 September, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4324, 2005 (10) SCC 597, 2004 AIR SCW 5773, 2004 AIR SCW 4995, (2004) 8 JT 545 (SC), 2004 (6) SLT 507, 2005 ALL MR(CRI) 277, 2005 SCC(CRI) 1635, 2005 CRILR(SC&MP) 122, 2004 (8) SCALE 591, (2004) 22 ALLINDCAS 752 (SC), 2004 CRIAPPR(SC) 865, (2004) 2 JCJR 202 (SC), 2004 (8) JT 545, (2005) 1 ORISSA LR 30, 2004 CRIAPPR(SC) 686, (2004) 7 JT 216 (SC), (2004) 4 KHCACJ 410 (SC), (2004) 2 JCJR 221 (SC), (2004) 23 ALLINDCAS 68 (SC), (2004) 7 SUPREME 292, (2004) 3 RAJ CRI C 888, (2005) 2 RECCRIR 64, (2004) 8 SCALE 591, (2004) 50 ALLCRIC 771, (2004) 3 CHANDCRIC 300, (2005) 1 ALLCRILR 317, (2004) 50 ALLCRIC 334, (2004) 29 OCR 697, (2004) 4 CRIMES 175, (2004) 22 INDLD 431, (2004) 4 CURCRIR 217, 2005 (1) ALD(CRL) 130, (2004) 2 ANDHLT(CRI) 355

Author: Ar. Lakshmanan

Bench: K.G. Balakrishnan, Ar. Lakshmanan

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           CASE NO.:
Appeal (crl.)  426 of 1998

PETITIONER:
STATE OF WEST BENGAL AND ORS.

RESPONDENT:
BABU CHAKRABORTY

DATE OF JUDGMENT: 02/09/2004

BENCH:
K.G. BALAKRISHNAN & DR. AR. LAKSHMANAN

JUDGMENT:
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JUDGMENT 2004 Supp(4) SCR 17 The Judgment of the Court was delivered by DR. AR. LAKSHMANAN, J. : This appeal is preferred by the State of West Bengal and two others to set aside the judgment of the Division Bench of the Calcutta High Court and also for expunging certain strictures passed against appellant Nos. 2 and 3, who belong to the Indian Police Service Cadre and a member of the West Bengal Police respectively. The High Court set aside the order of conviction and sentence passed by Additional Sessions in Sessions trial No. 29 of 1990 convicting the respondent-herein, Babu Chakraborthy, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "the Act") and sentencing him for rigorous

imprisonment for 10 years and pay a fine of Rs. l lakh in default of which one more year of imprisonment is to be undergone.

Briefly stated, the case of the prosecution is as under.

On obtaining of secret information, a raid was conducted at the house of the respondent/accused at about 21.45 hours under the supervision of appellant No. 2, K.L. Meena, the then Additional Superintendent of Police, Burdwan, accompanied by appellant No. 3, the Sub-Inspector and other persons and seized 3 gms 25 mgs of Heroin. The accused was arrested for possession in contravention of Section 8(c) of the Act.

According to the prosecution, necessary formalities as envisaged under Section 50 of the Act was observed by the raiding Police party. Thereafter, the accused on his own produced 123 packets containing Diacetyl Morphine commonly known as Heroin. The said 13 polythene packets were seized under a seizure list prepared. Witnesses signed the seizure list. Subsequently, seized articles were sealed and labelled. G.D. entry No. 275 at the Police Station was made at 11.30 p.m. by the officer in charge of the said Police Station, who was not the member of the raiding party. G.D. entry No. 276 was made at 11.55 p.m. at the same Police Station where the accused was produced and the seized articles were handed over to the Excise Officer. The Excise Off cials took charge of the accused for production before the Court. At about 7.00 a.m. on 06.05.1989, O.C. Memari Police Station sent wireless message to S.P., Burdwan and other senior officers mentioning full details regarding arrest and seizure on being instructed by P.W. 4. The said message was received by the control room of S.P., Burdwan at about 8.00 a.m. At about 4.00 p.m. on the same day, S.P. Burdwan sent a special message to Police, West Bengal, I.B., Crime, Commissioner, Burdwan Division, G.I.G. Burdwan Range, D.M. Burdwan etc. mentioning full details regarding. the arrest and seizure.

The Additional Sessions Court, Burdwan in S.T. No. 29 of 1990 in Sessions case No. 16 of 1990 convicted the accused and sentenced to l O years rigorous imprisonment and Rs. l lakh fine, in default of payment for another one year rigorous imprisonment. The accused preferred Criminal Appeal No. 461 of 1990 Before the High Court of Calcutta. The High Court, on 03.10.1997, pronounced the impugned judgment allowing Criminal Appeal No. 461 of 1990 and acquitted the accused. While passing the said order, several strictures and observations were made against appellant Nos. 2 and

3. According to the counsel for the appellant, the said observations and strictures were made by the High Court without giving even an opportunity of being heard to the said appellants to explain their stand. Aggrieved by the impugned judgment, a Special Petition was filed before this Court on 05.01.1998 and leave was granted by this Court on 06.04.1998. Interim stay of the direction regarding payment of Rs. l lakh as compensation was also made on 29.01.1998 and continued till date.

We heard Mr. Tapas Ray assisted by Ms. A. Subhashini, learned counsel for the appellant and Mr. K.V. Vishwanathan, learned counsel for the contesting respondent.

We have been taken through the judgment passed by the Sessions Court and of the High Court and the documents and annexures filed therein and also in this Court.

Mr. Tapas Ray raised the following contentions :

> 1. that the action taken by the appellants charging the accused for offence under Section 21 of the Act is justified in the given circumstances. According to him, the ingredients of Sections 41(2), 42(1) (2), 50, 51, 52, 54, 55 and 57 of the Act, are complied with. Under such circumstances, the High Court is not justified in setting aside the trial Court's judgment and releasing the accused;
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> 2. that the High Court is not justified in directing the State of West Bengal to pay compensation of Rs. l lakh to the respondent reserving liberty to the State Government to realise the same from appellant No. 2, a member of the I.P.S.;
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> 3. that the High Court has omitted to take note of the fact that the action taken by the officers under the Act is in good faith and protected under Section 69 of the Act. Mr. K.V. Vishwanathan, learned counsel for the respondent, submitted that the judgment of the High Court is a well-

considered one and that the High Court has found gross violation of the mandatory procedure prescribed in Section 42(1) and proviso to Section 42(1). Apart from this, several infirmities, inconsistencies and material contradictions as well as non-compliance of other mandatory provisions like Sections 55 and 57 of the Act and Section 102 of Cr.P.C. have also been found. Therefore, the judgment, by no stretch of imagination, can be characterized as a perverse judgment warranting interference in an appeal against acquittal.

Mr. Vishwanathan contended that the views expressed by the High Court on Section 42 of the Act finds support from a large number of judgments of this Court and that this Court has held that the provisions of Section 42(1) and the proviso to Section 42(1) and Section 42(2) are mandatory. According to the learned counsel, that any information has to be taken down in writing and that the proviso to Section 42(1) of the Act has to be strictly complied with. The reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an Offender, has to be recorded with the grounds of his belief and he has to send a copy thereof to the immediate superior, where the search is after sunset and before sunrise. He relied on two judgments of this Court being State of Punjab v. Balbir Singh, [1994] 3 SCC 299 and State of Punjab v. Baldev Singh, [1999] 6 SCC 172. It was further submitted that great significance has been attached to the mandatory nature of the provisions keeping in mind the stringent punishment prescribed in the Act. Arguing further, the learned counsel submitted that where mandatory provisions are not complied and where independent mahazar witnesses are not examined the accused would be entitled to be acquitted. At the time of hearing, the learned counsel has also pointed out other infirmities found by the High Court. They are :

(i) In exhibit-8, it is stated against Serial No. 2 regarding description of seal wax as West Bengal Excise seal No. Ex. 23 in red sealing wax. But curiously enough on left hand margin of Exhibit 8 a plain rubber stamp impression is seen. There is no such seal in red sealing wax as noted in exhibit-8 at serial No. 2;

(ii) There is no explanation why the other search witness namely Swapan Samata did not sign on the labels covering the seized articles being marked as exhibit-4, 5 & 6;

(iii) PW 2 is wholly incompetent and unreliable witness regarding the search and seizure as in his cross-examination he has admitted that he conducted the search as per the direction of PW 4 without preparing any search Memo;

(iv) There is no explanation what prompted the PW4 to locate the house of the accused 10 to 15 days prior to the date of raid. There is no answer to the pertinent question that if PW 4 was already in possession of the secret information what prevented him from raiding the house of the accused immediately;

(v) The West Bengal notification No. 1573 Ex. dt. 5.11.1985 and notification No. 1574 dt. 5.11.1985 do not show that PW 2 or PW 4 was authorized by the State Government under Section 41(2) of the Act;

(vi) There is no evidence to show that the accused was informed of the grounds of his arrest by PW 42 or PW 4 as required under Section 52(1) of the Act;

(vii) There is glaring inconsistencies and contradictions in the evidence of PW 2 and PW 4, the seizure list Ex. 7 and the G.D. entry Ex.-l, regarding the search and seizure of the contraband articles from the possession of the accused;

(viii) No where from the evidence on record it appears that PW l the O.C. Memari P.S. has complied with the mandatory provisions of Section 55 of the NDPS Act or for that matter PW 2 or PW 4 affixed their seals on the seized articles as per Ex-7 given in custody of PW-1 as recorded in the G.D. entry as per Ex-1;

(ix) It appears from the Ex-10 that the sealed cover containing labelled paper packets were received back from the laboratory on 3.8.89 by the Inspector of Excise, Kalan Katwa Range, Burdwan, but this sealed cover has not been produced before the trial Court to establish the identity of the samples seized by the Police;

(x) There was gross violation of Section 57 of the NDPS Act, as the PW 4 did not make a full report of all the particulars of such arrest or seizure to his immediate official superior. Further, PW 2 and PW 4 have without any reasonable ground of suspicion, entered and searched the house of the respondent and have vexatiously and unnecessarily arrested him so as to proceed against Section 58 of NDPS Act.

As far as the expunging of observation is concerned, where the observations are part and parcel of the reasoning, the Court may decline to expunge and further it is not the law that absence of notice alone is a ground for expunge particularly when the officers have appealed to the Court and had an opportunity to be heard.

The judgments of this Court in the case of Lashkari Ram and Others v. Mast Ram Tanta and Another, [1998] 6 SCC 666, In the matter of: 'K' A Judicial Officer, [2001] 3 SCC 54, P.K. Dave v. Peoples Union of Civil Liberties (Delhi) and Others, [1996] 4 SCC 262 were cited for the above proposition.

Learned counsel for the respondent submitted that this Court in the case of Daulat Ram v. State of Haryana, [1996] 11 SCC 711 and Mohd. Zahid v. Govt. of NCT of Delhi, [1998] 5 SCC 419 held that in hearing an appeal against the conviction, compensation can be awarded to the accused where ultimately he is acquitted and that this power is also available in the High Court since the High Court is having plenary power and there is no statutory bar. Additionally, the power is also traceable to Section 482.

Concluding his arguments, Mr. Vishwanathan submitted that though the cases of Rudul Sah v. State of Bihar and Anr, [1983] 4 SCC 141, Nilabati Behera v. State of Orissa & Ors., [1993] 2 SCC 746 and D.K. Basu v. State of West Bengal, [1997] l SCC 416 were cases under Article 32 and the Court held that compensation for breach of fundamental rights by the Public Officials could be awarded in a proceeding under Articles 32 and 226, that principle should be extended to Section 482 also that the High Court hearing a criminal appeal should have power to order compensation to the accused for illegal incarceration. Hence, it is submitted that the High Court is perfectly justified in invoking Section 482 Cr.P.C. while adjudicating appeal under Section 372 read with Section 386 Cr.P.C. and in ordering compensation.

As the last submission, Mr. Vishwanathan submitted that the respondent has undergone 7 years 4 months in Jail and that even this Court finds that acquittal by the High Court is incorrect, in view of the period of 7 years and 4 months undergone, may declare the law or point out the lower Courts error, but still may not interfere since special circumstances are shown to exist.

As an alternative plea, Mr. Vishwanathan submitted that even if the acquittal is found to be incorrect, this Court following the principles laid down in Chandra Singh v. State of Rajasthan, [2003] 6 SCC 545 may not direct the respondent to be taken into custody since he has already undergone 7 years 4 months for an alleged possession of 3 gm and 25 mgs of Heroin.

We have given our thoughtful consideration to the submissions made by both the learned counsel appearing on either side on facts and also on law. In the instant case, the respondent was charged for the offence under Section 21 of the Act for the illegal possession of 3 gms and 25 mgs of Diacetyl Morphine, which is commonly known as Heroin in contravention of Section 8(c) of the Act. The case of the prosecution was that PW 4, Additional S.P., received secret information and to work out the secret information, he along with PW 2, S.K. Dutta, went to the house of the respondent on 05.05.1989 and conducted a search of the house of the accused. What is important to notice is that

the information was not taken down in writing, as required under law and as rightly contended by the learned counsel for the respondent. The search conducted at 9.45 pm after sunset and before sunrise was without complying with the proviso to Section 42(1). Section 42(1) and the proviso to Section 42(1) and Section 42(2) is reproduced hereunder :

> "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, policy 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 persons knowledge or Information given by any person 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;
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> (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, if he thinks proper, arrest any person whom he has reason to believe to have committed by offence punishable under this Act;

Provided 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 (l)or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate off cial superior."

In view of the above, Section 42(2) also stood violated. The proviso to Section 42(1) requires that where an officer has reason to believe that a search warrant or authorization 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 before sunset and sunrise after recording the grounds of his belief.

We have perused the evidence led in this regard. Neither PW 4 nor PW 2 deposed that they had complied with the procedure under Section 42(1) and the proviso to Section 42(1) and Section 42(2) before they conducted the search. It is alleged by them that on search certain Polythene Bags containing Heroin were recovered. According to them, two independent witnesses of the locality Swapan Kumar Samanta and Ramkaran Prasad were taken and they witnessed the search. But unfortunately, these witnesses were not examined and no attempts were made to summon them at the trial. In fact, PW 2 - S.K. Dutta, on a specific question in cross-examination, deposed that no search memo was prepared and, PW 4 K.L. Meena said he does not remember if any search memo was prepared. Further, it is alleged that they came to Memari P.S. at 11.30 pm and Ex. l G.D. Entry was prepared. This G.D. Entry shows that the seized articles were recovered from the bed room of the accused. The accused was also arrested on 05.05.1989. Thereafter, the case was made over to PW 3 and after receiving the report from the Central Public Health and Laboratories, the accused was sent up for trial. The trial Court convicted the accused and punished the respondent for offences under Section 21 of the Act and sentenced him to undergo 10 years R.I. and pay a fine of Rs. l lakh.

The accused filed an appeal in the High Court and the High Court, after finding violation of Section 42(1), proviso to Section 42(1) and 42(2) of the NDPS Act and after finding several discrepancies acquitted the respondent and awarded compensation of Rs. l lakh. Strictures have also been passed on PW 4 and PW 2 and direction to the Magistrate to prosecute PW 4 and PW 2 was ordered.

As noticed earlier, the views of the High Court on Section 42 of the Act finds support from a large number of judgments of this Court. In the case of State of Punjab v. Balbir Singh, [1994] 3 SCC 299, a Bench of two Judges of this Court observed as under :

> "Under Section 42(1), the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1), if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

> To this extent, these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.
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> (3) Under Section 42(2), such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision, the same affects the prosecution case. To that extent, it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case."

In the case of State of Punjab v. Baldev Singh, [1999] 6 SCC 172, a Constitution Bench of this Court observed in paragraphs 9 & 10 as under :

> "Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter vi have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search, without a warrant between sunrise and sunset, and he may do so without recording his reasons of belief. The proviso to sub-section (1) lays down that if the empowered 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. Vide sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to sub-section (1), shall forthwith send a copy of the same to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. 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 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 substance in a public place where such possession appears to him to be unlawful."

Great significance has been attached to the mandatory nature of the provisions, keeping in mind the stringent punishment prescribed in the Act. This Court has attached great importance to the recording of the information and the ground of belief since that would be the earliest version that will be available to a Court of law and the accused while defending his prosecution. This Court also held that failure to comply with Section 42(1), proviso to Section 42(1) and Section 42(2) would render the entire prosecution case suspect and cause prejudice to the accused.

In the cases of Abdul Rashid Ibrahim Mansuri v. State of Gujrat, [2002] 2 SCC 513, Koluttumottil Razak v. State of Kerala, [2000] 4 SCC 465, Beckodan Abdul Rahman v. State of Kerala, [2002] 4 SCC 229 and in the case of Chhunna Alias Mehtab v. State of M.P., [2002] 9 SCC 363, this Court has held that the non-compliance of the provisions of the proviso to Section 42 of the Act which is mandatory, the action was held illegal and the conviction of the accused was set aside. This Court also held that the onus to prove compliance lies on the prosecution and in the absence of any prosecution evidence about the compliance with the mandatory procedure, the presumption would be that the procedure was not complied with.

In the case of Saiyad Mohd. Saiyad Umar Saiyad & Ors. v. State of Gujarat, [1995] 3 SCC 610, this Court held that the prosecution is obliged to give evidence of the search and all that transpired in its connection. It is very relevant that the prosecution witnesses speak about the compliance about the mandatory procedure and if under the evidence to this effect is not given, the Court must assume that the person to be searched was not informed of the protection. The Court must find that the possession of illicit articles under the Act was not established. It has been held that when the officer has not deposed that he had followed the procedure mandated, the Court is duty bound to conclude that the accused had not had the benefit of the protection that the Act affords; that therefore, his possession of articles under Act is not established and that the pre- condition for his having satisfactorily accounted for such possession had not been met; and to acquit the accused.

The above statement of law has been affirmed in the Constitution Bench judgment of this Court in the case of State of Punjab v. Baldev Singh (supra).

Though these observations were made in a case to which Section 50 applies, in view of the pronouncement of the judgment of three Judges of this Court in Abdul Rashid Ibrahim Mansuri v. State of Gujarat (supra), the approach by the Court in interpreting the law for the non-compliance of Section 42 and Section 50 must remain the same. In this case, PW-2 and PW-4 and any other prosecution witness do not speak about the compliance with the mandatory provisions of Section 42(1), proviso to Section 42(1) and Section 42(2).

It has been held that in any case where mandatory provisions are not complied with and where independent mahazar witnesses are not examined, the accused would be entitled to be acquitted and that any seizure in violation of the mandatory provisions would be inadmissible since these provisions are in the nature of statutory safeguards.

In the case of Sajan Abraham v. State of Kerala, [2001] 6 SCC 692, it was a chance recovery on the road and the observations made in the said judgment have to be confined to the facts of that case. The said judgment will not apply since in this case, the recovery is alleged from the house. For the same reason, the referral order in the case of Narcotics Control Bureau v. Pradeep Nath Mathur & Anr, [2003] 10 SCC 699 also need not detain this Court since the facts here are different from the case in Sajan Abraham v. State of Kerala (supra) and a larger Bench of five Judges and three Judges have maintained that Section 42 is mandatory under the present facts.

Replying to the arguments of Mr. Viswanathan, Mr. Tapas Ray, learned senior counsel, submitted that the operating portion of the impugned judgment clearly brings out the perversity in the judgment. According to him, the strictures that has been passed against the appellants by the Division Bench of the High Court are wholly unjustified and are liable to be expunged. He is right in his submission. In our view, the High Court was not justified and correct in passing observations/strictures against appellants 2 & 3 without affording an opportunity of being heard, and it is in violation of catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial Court to lodge a complaint to the Magistrate having jurisdiction for prosecuting appellants 2 and 3 for having committed and offence under Section 58 of the Act read with Section 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against appellants 2 & 3.

As rightly pointed out by Mr. Tapas Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalize the two police officers who were discharging their official duties as per the law. The action taken by appellants 2 & 3 have been taken in the case of discharging of their official duties while discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enables the Court to pass strictures against the officials and ordered compensation. There is no evidence or circumstance to show that there was any malafides on the part of these officers.

Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs. l lakh to the respondent/accused giving liberty to the State to realize or to recover the whole of such compensation from appellant No. 2, Mr. K.L. Meena, a member of the Indian Police Service, is wholly unjustified.

In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned are for implementing the objects behind the Act by resorting the check and to direct the raids etc. The High Court has further penalized the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks.

Above all, the respondent/accused who was the appellant before the High Court did not take any plea in the memorandum of grounds attributing motive against the appellants, particularly, appellants 2 & 3. The High Court by pronouncing the impugned judgment has not followed the parameters laid down by this Court inasmuch as when the appellant before the High Court, the accused, has not taken the plea attributing motives to appellants 2 & 3 specifically. However, we hold that the High Court is right in giving a finding that non-compliance of the mandatory statutory provisions vitiates the prosecution. There was no reason for the police officials to implicate the accused falsely in this case. Even the accused has nowhere including in his statement under Section 313 Cr.P.C. stated that the case was fabricated against him due to animosity or enmity by the police.

Even in the criminal appeal filed before the High Court, the accused has nowhere complained that the case was falsely implicated against him.

The impugned judgment directing the State Government to pay Rs. l lakh as compensation to the accused caused a great prejudice to the State. There was no ground for coming to such conclusion. In this regard, the High Court also has omitted to take note of the fact that the action taken under the Act in good faith is protected under Section 69 of the Act. The judgment of the High Court passing strictures against the professionals/ officials amounts to condemning the affected parties without being heard.

In paragraph supra, we have already discussed about the non-compliance of the mandatory provisions of the Act by the appellants 2-3. Under such circumstances, we are of the opinion that the judgment of the High Court cannot be characterized as perverse judgment warranting interference in appeal by this Court. Hence, we are of the opinion that no compensation can be awarded to the accused in the facts and circumstances of this case. We, therefore, allow the appeal in part and set aside that part of the impugned judgment ordering compensation to the accused and also the direction to launch prosecution against PW 2 and PW 4 (2nd appellant) under Section 58 of the NDPS Act. The impugned judgment shall stand in all other respects.

The appeal is partly allowed.