

CASE DETAILS

RANJAN KUMAR CHADHA

v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal Nos. 2239-2240 of 2011)

OCTOBER 06, 2023

[M.M. SUNDRESH AND J.B. PARDIWALA, JJ.]

HEADNOTES

Issues for consideration : The contention raised was that the High Court erred in holding the appellant guilty of offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as Section 50 of the NDPS Act was not complied with. It was contended that the High Court committed error in recording the finding that Section 50 of the NDPS Act was not applicable in the present case as the recovery of the contraband substance was not made as a result of the personal search of the accused but on account of the search of his bag.

The issue was whether Section 50 of the NDPS Act was at all applicable to the present case. The question, therefore, that required consideration was what meaning should be assigned to the phrase “to search any person” occurring in Section 50 of the NDPS Act. Whether the phrase “to search any person” means (a) search of articles on the person or body of the person; (b) would include search of articles in immediate possession as such bag or other luggage carried by him or in physical possession of the person to be searched; (c) would include search of bag or luggage which is presumed to be in possession of the person even though it may be lying in a house or railway compartment or at the airport; or (d) whether application of Section 50 could be extended to a case of search of a place, a conveyance or a house if the accused is physically present at the time of the search.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Search in bag of accused – Applicability of s.50 – What would be included within “search of a person” as stipulated u/s.50 – Term “person” – How to be construed – Whether a bag carried by the accused can be considered

to be inextricably linked to the accused, and therefore, any recovery of a contraband from such a bag without complying with s.50 would be inadmissible – Interpretation of Statutes.

Held: According to Constitution Bench in *Baldev Singh case*, the provisions of s.50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying – In the three Judge bench decision in *Pawan Kumar case*, it was held that the term “person” under s.50 would mean a natural person or a living unit and not an artificial person i.e., a bag or a briefcase – The three Judge Bench in *Pawan Kumar case* concluded that an external article which does not form part of body is outside the ambit of the word “person” occurring in s.50 of the NDPS Act – In view of plain and unambiguous statutory provision, there is no scope of interpreting section 50 in any other manner than the interpretation explained in *Baldev Singh* and *Pawan Kumar* – One must adhere to the principle of law as explained by the Constitution Bench in *Baldev Singh* and the three Judge Bench in *Pawan Kumar* – In the facts and circumstances of the case, the High Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that s.50 of the NDPS Act was not required to be complied with as the recovery was from the bag. [Paras 49, 83, 114, 124 and 125]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Object of:

Held: The main object of Section 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorized officer. [Para 33]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Phrase “to search any person” occurring in s.50 – Meaning of – Code of Criminal Procedure, 1973 – s.100(3).

Held : The phrase “to search any person” would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under Section 50 of the NDPS Act – In contrast, if search of any building, conveyance or

place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50 – However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed – This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency– The concealment which is suspected is on the person or about his person. [Para 36]

**Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 –
When applicable and when not:**

Held : Where a police officer is in the normal course of investigation of an offence or suspected offences as provided under the provisions of CrPC 1973 and in the course of such investigation when a search is completed and in that process happens to stumble upon possession of a narcotic drug or psychotropic substance, the question of invoking Section 50 would not arise – One can easily understand that without any prior information as to possession of any narcotic drug and psychotropic substance, a police officer might have held a search in the course of discharge of his duties as contemplated under the provisions of CrPC 1973 and, therefore, it would be well-nigh impossible to state that even under such a situation, the application of Section 50 would get attracted – s.50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence. [Paras 42 and 64]

**Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 –
Rights of the accused – Right to be informed about the search to be
conducted in presence of Gazetted Officer or Magistrate.**

Held : The person intended to be searched under Section 50 must be told in clear and unambiguous words that he has a right to have the search conducted in presence of either a Gazetted Officer or Magistrate – The person concerned must be made aware of his right and must be given only two options that have been provided under the section. [Para 56]

**Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 –
Accused waiving right to be searched in presence of Gazetted Officer
or Magistrate – Effect of – Whether it is still mandatory that his search
be conducted only before a Gazetted Officer or Magistrate:**

Held : There is no requirement to conduct the search of the person, suspected to be in possession of a narcotic drug or a psychotropic substance, only in the presence of a Gazetted Officer or Magistrate, if the person proposed to be searched, after being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate categorically waives such right by electing to be searched by the empowered officer – The words “if such person so requires”, as used in Section 50(1) of the NDPS Act would be rendered otiose, if the person proposed to be searched would still be required to be searched only before a Gazetted Officer or Magistrate, despite having expressly waived “such requisition”, as mentioned in the opening sentence of sub-Section (2) of Section 50 of the NDPS Act – In other words, the person to be searched is mandatorily required to be taken by the empowered officer, for the conduct of the proposed search before a Gazetted Officer or Magistrate, only “if he so requires”, upon being informed of the existence of his right to be searched before a Gazetted Officer or Magistrate and not if he waives his right to be so searched voluntarily, and chooses not to exercise the right provided to him under Section 50 of the NDPS Act – However, even when the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer – To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect – The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad – This would lend more credence to the compliance of Section 50 of the NDPS Act – In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. It is clarified that this compliance shall henceforth apply prospectively. [Paras 62, 63]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Rights of the accused – Right to be informed about the search to be conducted in presence of Gazetted Officer or Magistrate – Manner of communication of such right when multiple persons are to be searched.

Held: In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity – Any joint or common communication of this right would be in violation of Section 50. [Para 64]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Recovery of contraband under NDPS Act during search under statute other than NDPS Act – Whether provisions relating to NDPS Act would apply.

Held: Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted. [Para 64]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.50 – Burden of proof – Defined.

Held: The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted. [Para 64]

Narcotic Drugs and Psychotropic Substances Act, 1985 – Recovery in violation of s.50 – Consequences of – Whether non-compliance of s.50 would vitiate the trial.

Held: Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same – Any other article that has been recovered may be relied upon in any other independent proceedings. [Para 64]

Interpretation of Statutes – Literal rule of interpretation – Explained.

Held: It is a well-settled principle in law that the Court should not read anything into a statutory provision which is plain and unambiguous – A statute is an edict of the legislature – The language employed in a statute is the determinative factor of the legislative intent – The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself – The question is not of what may be supposed and has been intended but what has been said. [Para 115]

Interpretation of Statutes – Principle of Construction – *Casus omissus*.

Held: A casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute – This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.[Para 118]

LIST OF CITATIONS AND OTHER REFERENCES

State of Punjab v. Baldev Singh (1999) 6 SCC 172 : [1999] 3 SCR 977 and *Keshav Mills Co. Ltd. v. Commissioner of Income Tax, Bombay North, Ahmedabad* [1965] 2 SCR 908 – followed.

State of H.P. v. Pawan Kumar (2005) 4 SCC 350 : [2005] 3 SCR 417 – relied on.

SK. Raju alias Abdul Haque alias Jagga v. State of West Bengal (2018) 9 SCC 708 : [2018] 10 SCR 731 and *State of Rajasthan v. Parmanand and Another* (2014) 5 SCC 345 : [2014] 3 SCR 522 – held not applicable.

Yasihey Yobin. v. Department of Customs, Shillong (2014) 13 SCC 344 – held not good law.

Arif Khan alias Agha Khan v. State of Uttarakhand (2018) 18 SCC 380 : [2018] 6 SCR 787; *State of Punjab v. Baljinder Singh* (2019) 10 SCC 473 :

[2019] 13 SCR 520; *State of Punjab v. Balbir Singh* (1994) 3 SCC 299 : [1994] 2 SCR 208; *Gurjant Singh v. State of Punjab* (2014) 13 SCC 603 : [2013] 12 SCR 180; *Ali Mustaffa Abdul Rahman Moosa v. State of Kerala* (1994) 6 SCC 569 : [1994] 4 Suppl. SCR 52; *Saiyad Mohd. Saiyad Umar Saiyad and Ors. v. State of Gujarat* (1995) 3 SCC 610 : [1995] 3 SCR 117; *Manohar Lal v. State of Rajasthan* (1996) 11 SCC 391 : [1996] 1 SCR 837; *Joseph Fernandez v. State of Goa* (2001) 1 SCC 707; *Prabha Shankar Dubey v. State of M.P.* (2004) 2 SCC 56 : [2003] 6 Suppl. SCR 444; *Vijaysinh Chandubha Jadeja v. State of Gujarat* (2011) 1 SCC 609 : [2010] 13 SCR 255; *Kalema Tumba v. State of Maharashtra* (1999) 8 SCC 257 : [1999] 2 Suppl. SCR 670; *Sarjudas v. State of Gujarat* (1999) 8 SCC 508; *Birakishore Kar v. State of Orissa* (2000) 9 SCC 541; *Kanhaiya Lal v. State of M.P.* (2000) 10 SCC 380; *Gurbax Singh v. State of Haryana* (2001) 3 SCC 28 : [2001] 1 SCR 882; *Beckodan Abdul Rahiman v. State of Kerala* (2002) 4 SCC 229 : [2002] 3 SCR 53; *Madan Lal v. State of Himachal Pradesh* (2003) 7 SCC 465 : [2003] 2 Suppl. SCR 716; *State of Punjab v. Makhan Chand* (2004) 3 SCC 453; *Saikou Jabbi v. State of Maharashtra* (2004) 2 SCC 186 : [2003] 6 Suppl. SCR 456; *Namdi Francis Nwazor v. Union of India* (1998) 8 SCC 534; *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* (2000) 2 SCC 513 : [2000] 1 SCR 542; *State of Rajasthan v. Daulat Ram* (2005) 7 SCC 36 : [2005] 2 Suppl. SCR 880; *State of Haryana v. Mai Ram* (2008) 8 SCC 292 : [2008] 11 SCR 586; *Balbir Kaur v. State of Punjab* (2009) 15 SCC 795 : [2009] 10 SCR 29; *Ajmer Singh v. State of Haryana* (2010) 3 SCC 746 : [2010] 2 SCR 785; *Jarnail Singh v. State of Punjab* (2011) 3 SCC 521 : [2011] 2 SCR 888; *Suresh v. State of Madhya Pradesh* (2013) 1 SCC 550 : [2012] 10 SCR 1157; *Union of India v. Shah Alam* (2009) 16 SCC 644 : [2009] 9 SCR 1118; *Dayalu Kashyap v. State of Chhattisgarh* (2022) 12 SCC 398; *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* (1990) 1 SCC 277 : [1989] 2 Suppl. SCR 336; *D.R. Venkatchalam v. Dy. Transport Commissioner* (1977) 2 SCC 273 : [1977] 2 SCR 392; *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* (2000) 5 SCC 515 : [2000] 1 Suppl. SCR 38; *Padma Sundara Rao (Dead) & Ors. v. State T.N. & Ors.* (2002) 3 SCC 533 : [2002] 2 SCR 383 and *State of H.P. v. Pawan Kumar* (2004) 7 SCC 735 – referred to.

Lehigh Valley Coal Co. v. Yensavage, 218 FR 547; *Artemiou v. Procopiou* (1966) 1 QB 878; *Luke v. IRC* [1963] AC 557 : (1963) 1 All ER 655 – referred to.

John C. Derrnbachet.al., A Practical Guide to Legal Writing and Legal Method (1994) – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2239-2240 Of 2011.

From the Judgment and Order dated 20.08.2010 and 16.09.2010 of the High Court of Himachal Pradesh at Shimla in CRLA No. 356 of 1999.

Appearances:

Mrs. Pragya Baghel, Adv. for the Appellant.

Anil Nag, Adv. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT
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JUDGMENT

J. B. PARDIWALA, J.

1. The captioned appeals are at the instance of a convict accused of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) and are directed against the judgment and order of conviction dated 20.08.2010 and the order of sentence dated 16.09.2010 respby passed by the High Court of Himachal Pradesh in the Criminal Appeal No. 356 of 1999 by which the High Court allowed the appeal filed by the State of Himachal Pradesh and thereby set aside the judgment and order of acquittal passed by the Sessions Judge, Kullu dated 31.03.1999 in the Sessions Trial No. 44 of 1998. With the High Court allowing the State’s acquittal appeal, the appellant herein stood convicted of the offence punishable under Section 20 of the NDPS Act.

2. The appellant was heard on the point of sentence and ultimately, the High Court vide order dated 16.09.2010 sentenced the appellant herein to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 50,000/- (Rupees Fifty Thousand Only), and in default of payment of fine to undergo further rigorous imprisonment for six months.

CASE OF THE PROSECUTION

3. On 23.08.1998 ASI Lal Singh (PW 14) was on patrolling duty along with Head Constable Mohan Lal (PW 12), Constable Sant Ram (PW 13) and Constable Baldev Dass (PW 6). At about 6.30 pm while they all were at Dhalpur, the ASI Lal Singh (PW 14) received a secret information that one well built person wearing a white T-shirt and green trouser was standing at the Sarwari bus stand and was ready to board a bus bound for Delhi. The information was that the said person at the bus stand had in his possession contraband in the form of charas. The secret information was recorded by the PW 14 and forwarded to the Superintendent of Police, Kullu through the Constable Baldev Dass (PW 6). The ASI Lal Singh (PW 14), HC Mohan Lal (PW 12) and Constable Sant Ram (PW 13) accordingly left for Sarwari bus stand and reached there at about 6.45 pm. The officers were able to locate and identify the said person at the bus stand carrying a bag on his shoulder. In the presence of two independent witnesses, the said person was asked to disclose his identity. The person standing at the bus stand disclosed his identity as Ranjan Kumar Chadha son of Shri Ved Parkash Chadha resident of New Delhi. As the police officials suspected that he may be carrying charas, they gave him the option of being searched before the police or before a Gazetted Officer or Magistrate. The person concerned consented to be searched before the police. Before the search of the person of the accused was undertaken, the police officials got themselves searched before the witnesses. The bag which the accused was carrying along with him was also searched. The search of the bag resulted in recovery of three polythene bags containing charas. Many other articles like the driving licence, etc. were also recovered from his bag. On being weighed, the charas was found to be 1 kg. 250 gms.

4. Two samples of 25 grams each were drawn from the polythene bags containing charas and the remaining charas was sealed with seal "H". Seal impression was also taken on the NCB form and seal was handed over to the PW 9 Surinder Kumar. The charas was taken into possession vide recovery memo Ext. PK which was signed by the witnesses PW 9 Surinder Kumar, PW 10 Karam Singh and PW 12 Mohan Lal resp. The accused was informed of the grounds of his arrest, etc. vide memo Ext. PL. Ruqua Ext. PG was prepared and sent to the police station through the Constable Sant

Ram. The site plan Ext. PP was prepared on the spot. The statements of the witnesses were recorded. Thereafter, PW 14 came to the Police Station along with the accused and deposited the case property including the samples and the NCB form before the SHO who resealed the case property and samples with seal-X. One of the samples was sent for chemical examination to the CIL, Kandaghat and vide report Ext. PO the samples were found to be of charas having resin content of 33.58%. On this basis the accused was charge sheeted with having committed an offence as aforesaid.

5. The accused pleaded not guilty before the Trial Court and claimed to be tried. The defence of the accused was that when the bus was about to leave for Delhi and while the accused was sitting in the bus with some other passengers, one unclaimed bag was found and the accused was wrongly stated to be the owner of the said bag. In short, the case of the accused before the Trial Court was that he was falsely implicated in the case.

6. The Trial Court upon appreciation of the oral as well as documentary evidence came to the conclusion that the prosecution had failed to prove its case against the accused beyond a reasonable doubt and accordingly, acquitted the accused.

7. The State of Himachal Pradesh, being dissatisfied with the judgment and order of acquittal passed by the Trial Court, went in appeal before the High Court. The appeal came to be allowed by the High Court and the appellant herein stood convicted for the offence under Section 20 of the NDPS Act.

8. In such circumstances referred to above, the appellant is here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

9. Mrs. Pragya Baghel, the learned counsel appearing for the appellant, vehemently submitted that the High Court committed a serious error in holding the appellant guilty of the offence under the NDPS Act. She would submit that the High Court should not have disturbed a well reasoned judgment of acquittal passed by the Trial Court. The learned counsel submitted that the High Court committed a serious error in recording the

finding that Section 50 of the NDPS Act is not applicable in the present case as the recovery of the contraband substance was not made as a result of the personal search of the accused but on account of the search of his bag.

10. It was argued that the expression “to search any person” occurring in Section 50 of the NDPS Act means search of articles on the person or body of the person to be searched as well as the search of articles in immediate possession like bag and other luggage carried by him or in physical possession of the person to be searched.

11. The learned counsel argued that Section 50 of the NDPS Act was not complied with in its letter and spirit as although the case of the prosecution is that the appellant was given the option to be searched before the police or a Gazetted Officer or Magistrate, yet the appellant accused was not told that it is his right to be searched in the presence of a Magistrate or Gazetted Officer. The learned counsel argued that the fact that the accused was also given a third option of being searched before the police officer itself violated Section 50 of the NDPS Act. She would argue that Section 50 of the NDPS Act is mandatory and the Trial Court rightly held that Section 50 of the NDPS Act was not complied with.

12. In the last, the learned counsel argued that in case of search of person of the accused as well as the luggage which is in his immediate possession, then even in such circumstances Section 50 of the NDPS Act will apply and would have to be complied with. She would argue that in the case on hand not only the search of the person of the accused was undertaken but the search of the bag was also undertaken. To fortify this submission, the learned counsel relied on the decision of this Court in the case of **SK. Raju alias Abdul Haque alias Jagga v. State of West Bengal** reported in (2018) 9 SCC 708. According to the learned counsel, the ratio of the decision of this Court in **SK. Raju** (supra) is that if the search is of both the bag as well as the person of the accused, Section 50 of the NDPS Act would be attracted.

13. In such circumstances referred to above, the learned counsel prayed that there being merit in her appeals, the same be allowed and the judgment and order of conviction and sentence passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

14. Mr. Anil Nag, the learned counsel appearing for the State, on the other hand, vehemently opposed these appeals submitting that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order of conviction and sentence. He would argue that the High Court was justified in holding the appellant herein guilty of the offence punishable under Section 20 of the NDPS Act. It was vehemently argued that Section 50 of the NDPS Act is not applicable at all in the present case as the search was made only of the bag which the appellant was carrying on his shoulder and the person of the appellant was not searched. It was argued that the decision of this Court in *SK. Raju* (supra) is of no avail to the appellant herein as in the said case not only the person of the accused was searched but even the bag was searched and as the recovery of the contraband was from the bag, this Court took the view that Section 50 of the NDPS Act would be attracted.

15. The learned counsel appearing for the State in support of his aforesaid submission placed strong reliance on the decision of this Court in the case of *State of Punjab v. Baljinder Singh* reported in (2019) 10 SCC 473.

16. In such circumstances referred to above, the learned counsel appearing for the State prayed that there being no merit in the appeals, those may be dismissed.

ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the High Court committed any error in holding the appellant herein guilty of the offence punishable under Section 20 of the NDPS Act?

18. Before we advert to the rival submissions canvassed on either side, we must look into the relevant findings recorded by the High Court as well as by the Trial Court.

19. The Trial Court in its judgment of acquittal, while discussing Section 50 of the NDPS Act and its compliance, held as under:-

“11. Regarding compliance of provisions of section 50 of the Act, which is also a mandatory provisions under the Act, none of the witnesses of this consent memo EX.PG have supported the version of the prosecution. PW-9 Surinder Kumar and PW-10 Karam Singh independent witnesses joined in the raiding party have categorically stated that no such notice was given in their presence to the accused nor accused gave in writing the endorsement EX. PG/1 in their presence. There is only bare statement of PW-14 ASI Lal Singh that this notice was given to the accused but when there were admittedly independent witnesses present on the spot as per case of the prosecution, who have been declared hostile in court, it was for the prosecution to prove that these witnesses have suppressed truth from the court, but nothing has been proved against them as to why they should have deposed falsely against the prosecution or in favour of the accused and therefore, it is held that the prosecution has failed to prove beyond reasonable doubt the compliance of Section 50 of the Act, which is mandatory provision and on this score the accused Ranjan Chadha is entitled to acquittal. Moreover the recovery of charas from the bag of the accused is alleged to have taken place in presence of PW-9 Surinder Kumar and PW-10 Karam Singh in addition to PW-12 HC Mohan Lal, PW-13 Sant Ram and PW-14 ASI Lal Singh. However both the independent witnesses PW-9 Surinder Kumar and PW-10 Karam Singh have been declared hostile when they deposed that no bag was found in possession of the accused in their presence nor search of the accused was conducted in their presence and nothing has been proved against them, in their cross examination as to why they should have deposed falsely. From the statements of these witnesses, who have been declared hostile, I am of the opinion that reasonable doubt has been created in the case of the prosecution by the accused regarding alleged recovery of charas from the conscious and exclusive possession of the accused and accordingly by giving the benefit of doubt to the accused, it is held that the prosecution has failed to prove that on 23.8.1998 at 6.30 pm 1.250 grams of charas was recovered from the conscious and exclusive possession of the accused point No. 1 is accordingly answered.”

20. The High Court, while reversing the judgment and order of acquittal passed by the Trial Court and more particularly on the issue of applicability of Section 50 of the NDPS Act, held as under:-

*“As far as Section 50 of the Act is concerned the same is not at all applicable to the facts of the present case. The recovery of the contraband substance was not made as a result of the personal search of the accused but on account of the search from his bag. In such eventuality the police is not required to comply with Section 50 of the Act. In this behalf reference may be made to the decision of the Apex Court in **State of Himachal Pradesh Versus Pawan Kumar Latest HLJ 2004 [SC] 1247.**”*

ORAL EVIDENCE ON RECORD:-

21. We shall now look into the deposition of PW 12 Mohan Lal. Head Constable No. 175, Kullu Police Station. PW 12 in his examination in chief has deposed as under:-

“Stated that I am posted in P.S. Kullu since 1997. On 23.8.1998 I with ASI Lal Singh, Constable Sant Ram and Baldev Dass proceeded from P.S. Kullu at 5.30 p.m. for patrolling. At about 6.30 p.m. ASI received secret information at Dhalpur. Whereupon ASI Lal Singh prepared Information Report and sent to S.P. through Const. Baldev Dass and I and ASI Lal Singh and Const. Sant Ram went to Bus Stand. Kullu (Sarbari). We reached Sarbari Bus Stand at 6.45 p.m. Surender, Bus Stand Incharge and Karam Singh were made to join the investigation. Accused Ranjan Chadha present in the court was standing in the verandah of Bus Stand and he had a black blue colour bag on his shoulder. Before witnesses Surender and Karam Singh, notice was issued by ASI Lal Singh to the accused to the effect that ASI has apprehension that you may be having charas in your possession and whether he wants to give his search to ASI or before G.O. or Magistrate. Accused gave in writing that he wants his search to be conducted by the police. Memo of this was also prepared. Accused told his name as Ranjan Kumar Chadha. After that accused along with witnesses was taken to a room which is adjacent to the room of Incharge of Bus Stand. ASI searched the bag and besides personal luggage of Ranjan Chadha, Charas in three polythene packets were

recovered from the bag and it was weighed and the charas was found to be 1 kg. 250 gms. Out of which two samples of 25 gm. each were taken and sample and recovered charas were separately sealed in two packets with seal H. After affixing seal on samples, the seal was handed over to Surender Kumar witness. After that ASI prepared Rukka and gave it to constable who took the Rukka to police station. Accused was arrested and accused was told of the ground of arrest and sentence. Accused and witnesses Surender Singh, Karam Singh and I affixed our respective signature on the Consent Memo Exh.PJ, Recovery Memo Exh.PK, Grounds of Arrest Exh.PN. Exh.P.1 packet and Exh.P.2 sample are same. Personal search of accused was conducted. Exh.PE the memo of personal search bears my signature as witness. ”

22. We also looked into the cross examination of the PW 12 by the defence counsel. We take notice of the fact that nothing substantial could be elicited from the PW 12 in his cross examination. We also take notice of the fact that except suggestions put to the witness, there is no other form of cross examination.

23. We shall now look into the evidence of PW 14 ASI Lal Singh of Kullu Police Station. The PW 14 in his examination in chief has deposed as under:-

“Stated that I am posted in P.S. Kullu since 1997. On 23.8.98, I along with HC Mohan Lal, Constables Sant Ram and Baldev Dass moved out of police station Kullu at 5.30 p.m. for patrolling. The departure report was entered in the GD. When we were present at Dhalpur at 6.30 p.m., I got information from informer that one person wearing white T Shirt and green pajama and having French cut beard and is healthy is having one big bag with him and he with charas is ready to go to Delhi by bus from Sarbari Bus Stand. Thereupon I prepared information report and sent it to SP, Kullu through Constable Baldev Dass. Exh.PB is copy of it. After that I, with HC Mohan Lal, Constable Sant Ram went to Sarbari Bus Stand on foot and we reached Sarbari bus stand at 6.45 p.m. Surender Kumar, Bus Stand Incharge and Karam Singh were asked to join the investigation who joined the investigation. The person with same features as told by informer was found standing at that bus stand who had a bag on his shoulder. Before witnesses I

asked name of that person whereupon that person told his name as Ranjan Kumar Chadha S/o Ved Prakash Chadha, Sarva Priya Vihar, New Delhi. Before the witnesses, I asked that person that police has apprehension that he is in possession of charas and whether he wants that his personal search is to be conducted by police or by any G.O. or Magistrate. The accused present in the court is the same person who had given his consent in writing and verbally that he is ready to give his search to me. Consent Memo Exh.PJ was prepared in this regard and accused has given his consent thereon by writing the same in his handwriting. After that I gave my personal search through Exh.PM in the presence of witnesses. Then the bag which accused was holding was searched before the witnesses. Bag was black blue colour on which MITRE was found written. On search of bag, besides other belongings of accused such as D.L., Diary, etc., three polythene packets were recovered in which Charas in the form of Battis and tablets were recovered. On weighing, charas 1 kg. 250 gms. was found out of recovered charas, 2 samples of 25 grns. each were taken out and charas and samples were sealed with seal H. After filling up NCB Form and sample seal, seal was handed over to witness Surender Kumar. Charas was seized through seizure memo Exh.PJ on which accused affixed his signature and witnesses affixed their signatures. Accused was informed through Exh.PN regarding grounds of arrest, etc. Rukka Exh.PH was prepared and sent to Police Station through Constable Sant Ram and after registration of FIR he brought the file from police station. Site plan Exh.PP was prepared correctly. Statements of witnesses were recorded. Statement of Surender Kumar Marked X, now Exhibited as Exh.PQ and statement of Karam Singh marked Y now exhibited as Exh.PR have been correctly recorded by me as given by them. Nothing was left out and nor anything was added of my own in their statements. Memo of personal search Exh.PE was prepared and tickets Exh.PF for Delhi Bus was recovered from accused. Thereafter I with accused and case property came to police station. Case property, sample and NCB Form were submitted by me to SHO who sealed case property and sample with seal X. Parcels are Exh.P1 and Sample is Exh.P2. Accused was produced in the court on 24.8.98 and remand of accused obtained. During investigation, accused informed that charas has been

given to him by Nathan Ashley for taking the same to Delhi and that person is staying at Nest Guest House located near bus stand. We went to that Guest House but no person of this name was found there. On 25.8.98 I prepared special report and sent to SP through. constable Lakshman Dass and Exh.PC is copy of the same. After completing the investigation, documents and papers were given to SHO who (SHO) has prepared the challan.”

24. We also looked into the cross examination of the PW 14 by the defence counsel. We take notice of the fact that nothing substantial could be elicited from the PW 14 in his cross examination. We also take notice of the fact that except suggestions put to the witness, there is no other form of cross examination.

25. What is pertinent to note in the oral evidence of PW 12 and PW 14 respectively referred to above, is that the appellant herein was told or rather informed that if he so desired, he may get himself searched before the ASI or before the Gazetted Officer or Magistrate. Thus, it is evident from the oral evidence of both PW 12 and PW 14 resply that three options were given to the appellant herein – first to be searched before the ASI i.e. Assistant Sub-Inspector, second, before the Gazetted Officer and third, before any Magistrate. It is also pertinent to note that the appellant was not informed in so many words that it is his right under Section 50 of the NDPS Act to seek search before a Gazetted Officer or Magistrate.

26. So far as the issue of applicability of Section 50 of the NDPS Act is concerned, there are two aspects of the same. Even if we hold that Section 50 of the NDPS Act was not complied with, then the second question would be, whether Section 50 could at all be made applicable to the case on hand.

27. We have no hesitation in recording a finding that Section 50 of the NDPS Act was not complied with as the appellant could not have been offered the third option of search to be conducted before the ASI. Section 50 of the NDPS Act only talks about a Gazetted Officer or Magistrate. What is the legal effect if an accused of the offence under the NDPS Act is being told, whether he would like to be searched before a police officer or a Gazetted Officer or Magistrate?

28. This Court in *State of Rajasthan v. Parmanand and another*, (2014) 5 SCC 345, held that it is improper for a police officer to tell the accused that a third alternative is also available i.e. the search before any independent police officer. This Court also took the view that a joint communication of the right available under Section 50 of the NDPS Act to the accused would frustrate the very purport of Section 50. We quote the relevant observations made by this Court as under:-

“15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent 1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent 2 Surajmal was also conducted. Therefore, in the light of the judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.

*16. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before the nearest gazetted officer or the nearest Magistrate or before PW 5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in *State of Punjab v. Baldev Singh* (1999) 6 SCC 172, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent 2 Surajmal is stated to have signed for himself and for respondent 1 Parmanand. Respondent 1 Parmanand did not sign.*

17. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment

and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before the nearest gazetted officer or before the nearest Magistrate. Similar view taken by the Punjab and Haryana High Court in Paramjit Singh v. State of Punjab, (1977) 1 Crimes 242 (P&H) and the Bombay High Court in Dharamveer Lekhram Sharma v. State of Maharashtra (2001) 1 Crimes 586 (Bo0m) meets with our approval.

18. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent Surajmal has signed for himself and for respondent 1 Parmanand. Respondent 1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent 2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent 1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.

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

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

(Emphasis supplied)

29. Thus, from the oral evidence on record as discussed above it is evident that Section 50 of the NDPS Act stood violated for giving a third option of being searched before a police officer.

30. However, the important question that falls for our consideration is whether Section 50 of the NDPS Act is at all applicable to the present case? We have noticed few discrepancies in the oral evidence of PW 12 and PW 14 respectively and the finding recorded by the High Court. The High Court in its impugned judgment has said in so many words that the appellant was searched in presence of the independent witnesses and the bag, which was on the shoulder of the appellant was also searched. But for the discrepancies, we could have considered applying the ratio as enunciated by this Court in the case of **SK. Raju** (supra) as well as **Parmanand** (supra). However, there is nothing in the oral evidence of the police officers on record to indicate that the search of the person of the appellant was also undertaken along with the bag. Therefore, we proceed on the assumption that it is only the bag which was searched which led to the recovery of the contraband.

31. The question, therefore, that requires consideration is what meaning should be assigned to the phrase “to search any person” occurring in Section 50 of the NDPS Act. Whether the phrase “to search any person” means (a) search of articles on the person or body of the person; (b) would include search of articles in immediate possession as such bag or other luggage

carried by him or in physical possession of the person to be searched; (c) would include search of bag or luggage which is presumed to be in possession of the person even though it may be lying in a house or railway compartment or at the airport; or (d) whether application of Section 50 could be extended to a case of search of a place, a conveyance or a house if the accused is physically present at the time of the search.

32. Section 50 of the NDPS Act is reproduced hereinbelow:-

“Section 50. Conditions under which search of persons shall be conducted.

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

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

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

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

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and

within seventy-two hours send a copy thereof to his immediate official superior.”

33. Ordinarily, it could be said or argued that “to search any person” would mean, to search the articles on the person or body of the person to be searched and would normally not include the articles which are not on the body of the person to be searched. When we are deliberating on the scope and true purport of Section 50 of the NDPS Act, we should bear in mind that the main object of Section 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorized officer.

34. The aforesaid interpretation is made clear to a certain extent by Section 50(4) of the NDPS Act which provides for search of a female. Section 50(4) of the NDPS Act provides that “*no female shall be searched by anyone excepting a female*”. If the articles to be searched are not on the person or body, then there is no question of a search being carried out by a female. But when articles which are on the body of the person to be searched, then such search could be only done by another female. This is necessary as the law enjoins strict regard to decency. This provision also gives some clue as to how to interpret the phrase “to search any person” occurring in Section 50 of the NDPS Act.

35. There is a similar provision in the Code of Criminal Procedure, 1898 (for short, “CrPC 1898”) and also in the Code of Criminal Procedure, 1973 (for short, “CrPC 1973”). Section 51, Part III, of the CrPC 1898, provides that the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him. With regard to search of a female, Section 51(2) of the CrPC 1973, provides that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. Same safeguards are provided under Section 102(3) of the CrPC 1898 and Section 100 of the CrPC 1973.

36. Considering the aforesaid provisions, the inference which can be drawn is that “to search any person” would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under Section 50 of

the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed. This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. The concealment which is suspected is on the person or about his person.

37. The provisions of Section 50 were exhaustively construed by this Court in the case of ***State of Punjab v. Balbir Singh***, (1994) 3 SCC 299. We may refer to the relevant observations made in paragraph 21 of the aforesaid judgment which deals with this aspect. It is as under:-

“21. Both under Sections 41 and 42, the officers empowered can enter and search the place and also arrest the person suspected to have committed the offence either on the basis of his own knowledge or on the basis of information reduced to writing. If an arrest is made and a person is to be searched, then as noted above Section 50 comes into operation and the search of the person has to be carried out in the manner provided thereunder. ...”

(Emphasis supplied)

38. The aforesaid observations make it clear that when search of an arrested person is to be carried out, then the procedure prescribed under Section 50 is to be followed and not in those cases where search is to be carried out of any building, a conveyance or any premises which may be public or private where bags and baggage containing narcotic drugs are lying. The object and purpose of such search is also discussed in the said judgment and the relevant observations are as under:-

“4. ... This provision obviously is introduced to avoid any harm to the innocent persons and to avoid raising of allegation of planting or fabrication by the prosecuting authorities. It lays down that if the person to be searched so requires, the officer who is about to search

him under the provisions of Sections 41 to 43, shall take such person without any unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest magistrate. One of the questions raised is that what meaning is to be given to the words “if the person to be searched so requires”. Do they cast a duty upon the officer about to make the search to intimate such person that if he so requires he would be taken before the nearest Gazetted Officer or the nearest magistrate for the purpose of making search in their presence or it is for such person to make such a request on his own without being informed by the officer? ...”

In paragraph 5, the Court observed:-

“5. ... But when a police officer carrying on the investigation including search, seizure or arrest empowered under the provisions of the CrPC comes across a person being in possession of the narcotic drugs or psychotropic substances then two aspects will arise. If he happens to be one of those empowered officers under the NDPS Act also then he must follow thereafter the provisions of the NDPS Act and continue the investigation as provided thereunder. If on the other hand, he is not empowered then the obvious thing he should do is that he must inform the empowered officer under the NDPS Act who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. But at this stage the question of resorting to Section 50 and informing the accused person that if he so wants, he would be taken to a Gazetted Officer and taking to Gazetted Officer thus would not arise because by then search would have been over. As laid down in Section 50 the steps contemplated thereunder namely informing and taking him to the Gazetted Officer should be done before the search. When the search is already over in the usual course of investigation under the provisions of CrPC then the question of complying with section 50 would not arise.”

39. Thereafter the Court considered the provisions of Sections 100 and 165 resply of the CrPC 1973 which deal with the search of the premises and the person. Section 100(1) deals with the search of a closed place and Section 100(3) deals with search of a person, whereas Section 165 deals with search by a police officer from any place. The Court observed that if there

is non-compliance of Section 100 or 165 that itself cannot be a ground for rejecting the prosecution case outright. The effect of such non-compliance will have a bearing on appreciation of evidence of official witnesses and other material depending upon the facts and circumstances of each case. In carrying out such searches if they come across any substance covered by the NDPS Act, the question of complying with the provisions of the said Act including Section 50 at that stage would not arise. When the contraband seized during such arrest or search attracts the provisions of the NDPS Act, then from that stage the other relevant provisions of the NDPS Act would be attracted and further steps have to be taken in accordance with the provisions of the said Act.

40. Thereafter, the Court considered whether the failure to comply with the conditions laid down in Section 50 of the NDPS Act by the empowered or authorised officer while conducting the search affects the prosecution case, and held as under:-

“18. ... It is obvious that the legislature while keeping in view the menace of illicit drug trafficking deemed it fit to provide for corresponding safeguards to check the misuse of power thus conferred so that any harm to innocent persons is avoided and to minimise the allegations of planting or fabricating by the prosecution, Section 50 is enacted.”

The Court thereafter held as under:-

“20. ... When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50 in the context is all the more important and valuable. Therefore it is to be taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate. Thus the provisions of Section 50 are mandatory.”

41. When we refer to the decision of this Court in **Balbir Singh** (supra), what has been held therein as a broad principle in para 25(1), is as under:-

“25. The questions considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows:

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act."

42. The said principle clearly postulates a situation where a police officer in the normal course of investigation of an offence or suspected offences as provided under the provisions of CrPC 1973 and in the course of such investigation when a search is completed and in that process happens to stumble upon possession of a narcotic drug or psychotropic substance, the question of invoking Section 50 would not arise. When that principle is examined carefully one can easily understand that without any prior information as to possession of any narcotic drug and psychotropic substance, a police officer might have held a search in the course of discharge of his duties as contemplated under the provisions of CrPC 1973 and, therefore, it would be well-nigh impossible to state that even under such a situation, the application of Section 50 would get attracted. The facts involved in **Balbir Singh** (supra) would indicate that the police officer effected the arrest, search and seizure on reasonable suspicion that a cognizable offence was committed and not based on any prior information that any offence punishable under the NDPS Act was committed and, therefore, it was argued that complying with the provisions of the NDPS Act at the time of the said arrest, search and seizure did not arise inasmuch as such arrest, search and seizure was substantially in accordance with the provisions of CrPC 1973. It was, therefore, contended that such arrest, search and seizure cannot be declared as illegal. While examining the contention in the said background, Principle 1 in para 25

referred to above came to be rendered. (See : **Gurjant Singh v. State of Punjab** (2014) 13 SCC 603).

43. It all started with the Constitution Bench decision of this Court in the case of **State of Punjab v. Baldev Singh**, (1999) 6 SCC 172. The Constitution Bench had to be constituted in view of the cleavage of opinion expressed by this Court in the **State of Punjab v. Balbir Singh** reported in (1994) 3 SCC 299, **Ali Mustaffa Abdul Rahman Moosa v. State of Kerala** reported in (1994) 6 SCC 569, and **Saiyad Mohd. Saiyad Umar Saiyad and Ors. v. State of Gujarat** reported in (1995) 3 SCC 610.

44. This Court in **Baldev Singh** (supra) held that Section 50 would come into play only in cases where search of a person is conducted under the NDPS Act as contemplated under Section 42. Where there is no search of a person under the NDPS Act, Section 50 would have no application. However, where in the course of a general search being conducted under the CrPC, 1973 in connection with any offence or suspected offence except one under the NDPS Act, there is recovery of any contraband, the provisions of the NDPS Act shall forthwith apply in such cases also. The relevant observations made are reproduced below:-

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

13. Vide Section 51, the provisions of the Code of Criminal Procedure, 1973 shall apply, insofar as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued and arrests, searches and seizures made under the NDPS Act. Thus, the NDPS Act, 1985 after incorporating the broad principles regarding search, seizure and arrest etc. in Sections 41, 42, 43, 49 and 50 has laid down in Section 51 that the provisions of the Code of Criminal Procedure shall apply insofar as they are not inconsistent with the provisions of the NDPS Act. The expression “insofar as they are not inconsistent with the provisions of

this Act” occurring in Section 51 of the NDPS Act is of significance. This expression implies that the provisions of the Code of Criminal Procedure relating to search, seizure or arrest apply to search, seizure and arrest under the NDPS Act also except to the extent they are “inconsistent with the provisions of the Act”. Thus, while conducting search and seizure, in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the NDPS Act are also required to be followed. Section 50(4) of the NDPS Act lays down that no female shall be searched by anyone excepting a female. This provision is similar to the one contained in Section 52 of the Code of Criminal Procedure, 1898 and Section 51(2) of the Code of Criminal Procedure, 1973 relating to search of females. Section 51(2) of the Code of Criminal Procedure, 1973 lays down that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. The empowered officer must, therefore, act in the manner provided by Section 50(4) of the NDPS Act read with Section 51(2) of the Code of Criminal Procedure, 1973 whenever it is found necessary to cause a female to be searched. The document prepared by the investigating officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the female official who carried out the personal search of the female concerned should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity.

14. The provisions of Sections 100 and 165 CrPC are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drug or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered

officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. In Balbir Singh case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of CrPC in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view."

45. This Court in **Baldev Singh** (supra) further observed that the conditions prescribed in Section 50 are an obligation imposed upon the empowered officer and the same must be duly complied with before conducting any search of a person. The relevant observations are reproduced hereunder:-

"24. ... There is, thus, unanimity of judicial pronouncements to the effect that it is an obligation of the empowered officer and his duty before conducting the search of the person of a suspect, on the basis of prior information, to inform the suspect that he has a right to require his search being conducted in the presence of a gazetted officer or a Magistrate and that the failure to inform the suspect of his right, would render the search illegal because the suspect would not be able to avail of the protection which is inbuilt in Section 50. Similarly, if the person concerned requires, on being so informed by the empowered officer or otherwise, that his search be conducted in the presence of a gazetted officer or a Magistrate, the empowered officer is obliged to do so and failure on his part to do so would also render the search illegal and the conviction and sentence of the accused bad."

(Emphasis supplied)

46. This Court in **Baldev Singh** (supra) also explained the purpose behind the safeguards engraved under Section 50 and the reason as to why the right of the suspect to have his search conducted before a Gazetted Officer or Magistrate ought to be zealously guarded by the courts. It was held as under:-

“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

$$x \qquad x \qquad x \qquad x$$

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.”

(Emphasis supplied)

47. As to what would be the consequences of a recovery made in violation of Section 50, it was observed in **Baldev Singh** (supra) that it would have the effect of rendering such incriminating material inadmissible in evidence and hence, cannot be relied upon to hold the accused guilty for being found to be in unlawful possession of any contraband. The Court further held that it would not impede the prosecution from relying upon recovery of any other incriminating article in any other independent proceedings. It was further held that the burden of proving that the conditions of Section 50 were complied with, would lie upon the prosecution to establish. The relevant observations are being reproduced hereunder:-

“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.

33. The question whether or not the safeguards provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the 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 in that section were complied with, it would not be advisable to cut short a criminal trial.

x x x x

45. ... Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot

allow admission of evidence against an accused, where the court is satisfied that the evidence had been obtained by a conduct of which the prosecution ought not to take advantage particularly when that conduct had caused prejudice to the accused. If after careful consideration of the material on record it is found by the court that the admission of evidence collected in search conducted in violation of Section 50 would render the trial unfair then that evidence must be excluded. In R. v. Collins, (1987) 1 SCR 265 (Canada), the Supreme Court of Canada speaking through Lamer, J. (as his Lordship, Chief Justice of the Supreme Court of Canada then was) opined that the use of evidence collected in violation of the Charter rights of an accused would render a trial unfair and the evidence inadmissible. ...

x x x x

55. We, therefore, hold 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 by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused. Any other material/article recovered during that search may, however, be relied upon by the prosecution in other/independent proceedings against an accused notwithstanding the recovery of that material during an illegal search and its admissibility would depend upon the relevancy of that material and the facts and circumstances of that case.”

(Emphasis supplied)

48. This Court ultimately summed up its findings with the following ten conclusions reproduced below:-

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

(1) That when an empowered officer or a duly 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 concerned official 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 judicial process may come under 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 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 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 concerned person 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 v. Director of Inspection (Investigation), (1974) 1 SCC 345, 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's case correctly interprets and distinguishes the judgment in Pooran Mal's case and the broad observations made in State of H.P. v. Pirthi Chand, (1996) 2 SCC 37, and State of Punjab v. Jasbir Singh, (1996) 1 SCC 288, case are

not in tune with the correct exposition of law as laid down in Pooran Mal's case."

(Emphasis supplied)

49. Thus, the Constitutional Bench in express terms laid down that although the non-compliance of Section 50 may not vitiate the trial yet would render the recovery of the contraband doubtful and may vitiate the conviction of the accused. The emphasis laid by the Court is on illicit articles seized from the "person of an accused" during the search conducted in violation of safeguards provided in Section 50 of the NDPS Act. In other words, according to **Baldev Singh** (supra), the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying.

When Section 50 could be said to be complied with?

50. This Court in a number of cases has dealt with this very aspect and laid down the principles with respect to when Section 50 be said to be complied with. This Court in **Manohar Lal v. State of Rajasthan** reported in (1996) 11 SCC 391, held that Section 50 only requires the option to be given to the accused to say whether he would like to be searched in the presence of a Gazetted Officer or Magistrate. The relevant observations made therein are reproduced below:-

"2. ... The provision only requires the option to be given to the accused to say whether he would like to be searched in the presence of a Gazetted Officer or a Magistrate; and on exercise of that option by the accused, it is for the officer concerned to have the search made in the presence of the nearest Gazetted Officer or the nearest Magistrate whosoever is conveniently available for the purpose in order to avoid undue delay in completion of that exercise. It is clear from Section 50 of the NDPS Act that the option given thereby to the accused is only to choose whether he would like to be searched by the officer making the search or in the presence of the nearest available Gazetted Officer or the nearest available Magistrate. The choice of the nearest Gazetted Officer or the nearest Magistrate has to be exercised by the officer making the search and not by the accused."

(Emphasis supplied)

51. In **Joseph Fernandez v. State of Goa** reported in (2001) 1 SCC 707, this Court held that only substantial compliance of Section 50 is required, and informing the suspect that if he wishes he may be searched in presence of a Gazetted Officer or Magistrate without the use of the word “right” would not amount to breach of Section 50. The relevant observations made therein are reproduced below:-

“2. Learned counsel tried to highlight a point that Section 50 of the Narcotic Drugs and Psychotropic Substances Act has not strictly been complied with by PW 8, the officer who conducted the search. According to the learned counsel for the appellant the searching officer should have told the person who was subjected to search that he had a right to be searched in the presence of a gazetted officer or a Magistrate. In this case PW 8 has deposed that she told the appellant that if he wished he could be searched in the presence of the gazetted officer or a Magistrate to which the appellant had not favourably reciprocated. According to us the said offer is a communication about the information that the appellant has a right to be searched so. It must be remembered that the searching officer had only Section 50 of the Act then in mind unaided by the interpretation placed on it by the Constitution Bench. Even then the searching officer informed him that “if you wish you may be searched in the presence of a gazetted officer or a Magistrate”. This according to us is in substantial compliance with the requirement of Section 50. We do not agree with the contention that there was non-compliance with the mandatory provision contained in Section 50 of the Act.”

52. In **Prabha Shankar Dubey v. State of M.P.** reported in (2004) 2 SCC 56, this Court held that for the purpose of due compliance of Section 50 there is no specific word or form in which the communication is to be made and it is not necessary to use the word “right”, as the person to be searched is only required to be made aware that he has a choice of having his search conducted before a Gazetted Officer or Magistrate. The relevant observations made in it are reproduced hereunder:-

“11. ... What the officer concerned is required to do is to convey about the choice the accused has. The accused (suspect) has to be told in a way that he becomes aware that the choice is his and not of the officer concerned, even though there is no specific form. The use of the word

“right” at relevant places in the decision of Baldev Singh case seems to be to lay effective emphasis that it is not by the grace of the officer the choice has to be given but more by way of a right in the “suspect” at that stage to be given such a choice and the inevitable consequences that have to follow by transgressing it.”

53. However, a five-Judge Bench of this Court in **Vijaysinh Chandubha Jadeja v. State of Gujarat** reported in (2011) 1 SCC 609, overruled the decisions in **Prabha Shankar Dubey** (*supra*) and **Joseph Fernandez** (*supra*) and disapproved the concept of “substantial compliance” and held that the obligation under Section 50 is mandatory and the failure to comply with the same would render the recovery of illicit article suspicious and vitiate the conviction, more particularly if the basis of conviction is the recovery of illicit article from the accused during search. The person to be searched is to be specifically informed that he has a right to be searched in presence of a Gazetted Officer or Magistrate. The Court also held that while it is the choice of police to take the suspect either before a Gazetted Officer or Magistrate, an endeavour should be made to take him before Magistrate. The relevant observations made therein are reproduced below:-

“29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

x

x

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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.*

32. *We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.”* (Emphasis supplied)

54. In **Parmanand** (supra) this Court held that Section 50 confers a right upon the accused to be searched either by a Gazetted Officer or Magistrate, and as such while informing the suspect of its right, only the aforesaid two options can be provided. Section 50 could be said to be violated where a third option is also offered, be it that of being searched by the superintendent of police or by the police officer himself.

55. Although a superintendent of police is a Gazetted Officer, yet the reason why this court in **Parmanand** (supra) held the third option to be bad in law is because, first, in that case the Superintendent of Police was a part of the raiding party and as such was not an independent witness and secondly, as discussed, Section 50 provides for only two options, either a Magistrate or Gazetted Officer.

56. Thus, the person intended to be searched under Section 50 must be told in clear and unambiguous words that he has a right to have the search conducted in presence of either a Gazetted Officer or Magistrate. The person concerned must be made aware of his right and must be given only two options that have been provided under the section.

58. We also looked into the decision of this Court in *Arif Khan alias Agha Khan v. State of Uttarakhand* reported in (2018) 18 SCC 380, wherein it was held that even where the accused after being informed of his right under Section 50, chooses to decline the same, his search by the police must be conducted in presence of either a Gazetted Officer or Magistrate. The relevant observations are as under:-

5. The raiding police party accordingly obtained his consent in writing to be searched by the raiding police party. The raiding police party then searched the accused which resulted in seizure of “charas” weighing around 2.5 kg in quantity from his body.

24. We do not agree to this finding of the two courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband “charas” does not satisfy the mandatory requirements of Section 50 as held by this Court in *Vijaysinh Chandubha Jadeja*. This we say for the following reasons:

24.1. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or gazetted officer.

24.2. Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “charas” was not made from the appellant in the presence of any Magistrate or gazetted officer.

24.3. Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “charas” from him, was the gazetted officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a gazetted officer.

24.4. Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer.

25. Though, the prosecution examined as many as five police officials (PW 1 to PW 5) of the raiding police party but none of them deposed that the search/recovery was made in presence of any Magistrate or a gazetted officer.

26. For the aforementioned reasons, we are of the considered opinion that the prosecution was not able to prove that the search and recovery of the contraband (charas) made from the appellant was in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and, in this case, we have found that the prosecution has failed to prove the compliance as required in law, the appellant is entitled to claim its benefit to seek his acquittal.”

59. However, in our opinion, the observations made in *Arif Khan* (supra) are in direct conflict with the Constitution Bench decision of *Baldev Singh* (supra). It appears that the attention of the learned Judges while rendering the decision of *Arif Khan* (supra) was seemingly not invited to the words “if the person to be searched so requires” used in section 50.

60. Section 50 of the NDPS Act only goes so far as to prescribe an obligation onto the police officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or Magistrate. Whether or not the search should be conducted in the presence of a Gazetted Officer or Magistrate ultimately depends on the exercise of such right as provided under Section 50. In the event the suspect declines this right, there is no further obligation to have his search conducted in the presence of a Gazetted Officer or Magistrate, and in such a situation the empowered police officer can proceed to conduct the search of the person himself. To read Section 50 otherwise would render the very purpose of informing the suspect of his right a redundant exercise. We are of the view that the decision of this Court in *Arif Khan* (supra) cannot be said to be an authority for the proposition that notwithstanding the person proposed to be searched has, after being duly apprised of his right to be searched before a Gazetted Officer or Magistrate, but has expressly waived this right in clear and unequivocal terms; it is still mandatory that his search be conducted only before a Gazetted Officer or Magistrate.

61. A plain reading of the extracted paragraphs of *Arif Khan* (supra) referred to above would indicate that this Court while following the ratio of the decision of the Constitution Bench in *Vijaysinh Chandubha Jadeja* (supra) held that the same has settled the position of law in this behalf to the effect that, whilst it is imperative on the part of the empowered officer to apprise the person of his right to be searched only before a Gazetted Officer or Magistrate; and this requires strict compliance; this Court simultaneously proceeded to reiterate that in *Vijaysinh Chandubha Jadeja* (supra) “*it is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act*”.

62. There is no requirement to conduct the search of the person, suspected to be in possession of a narcotic drug or a psychotropic substance, only in the presence of a Gazetted Officer or Magistrate, if the person proposed to be searched, after being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate categorically waives such right by electing to be searched by the empowered officer. The words “if such person so requires”, as used in Section 50(1) of the NDPS Act would be rendered otiose, if the

person proposed to be searched would still be required to be searched only before a Gazetted Officer or Magistrate, despite having expressly waived “such requisition”, as mentioned in the opening sentence of sub-Section (2) of Section 50 of the NDPS Act. In other words, the person to be searched is mandatorily required to be taken by the empowered officer, for the conduct of the proposed search before a Gazetted Officer or Magistrate, only *“if he so requires”*, upon being informed of the existence of his right to be searched before a Gazetted Officer or Magistrate and not if he waives his right to be so searched voluntarily, and chooses not to exercise the right provided to him under Section 50 of the NDPS Act.

63. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that *“I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer.”* This would lend more credence to the compliance of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

64. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-

- (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate

if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

- (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.
- (iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.
- (iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.
- (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.
- (vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.
- (vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.
- (viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start

applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

- (ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.
- (x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.

Whether Section 50 is applicable while searching a bag of the accused?

65. **Baldev Singh** (supra), discussed above, gave rise to a debate as to what would be included within “*search of a person*” as stipulated under Section 50. This Court started interpreting the expression giving a literal or strict interpretation of the word “person”, thereby distinguishing the search of a person from that of a bag or vehicle or premises. As a result, even if there was no compliance with Section 50 while searching the accused person’s bag, the evidence of recovery would still be deemed admissible. However, over a period of time, this Court started reading the word “person” in a slightly broader sense so as to mandate that Section 50 be complied with even while conducting a search of anything that is inextricably linked to the accused. As a result, a bag which was being carried by the accused was considered to be inextricably linked to the accused, and therefore, any recovery of a contraband from such a bag without complying with Section 50 would be inadmissible.

66. We shall now look into the various decisions of this Court on the interpretation of Section 50.

Section 50 does not cover a bag being carried by the accused

67. In **Kalema Tumba v. State of Maharashtra** reported in (1999) 8 SCC 257, 2 kgs of heroin was recovered from a bag belonging to the accused. It was argued that as the requirements under Section 50 were not complied with, the contraband recovered in the course of the search would be inadmissible. This Court, while rejecting such argument and relying upon **Baldev Singh** (supra), held that Section 50 would not apply to the search of a bag belonging to the accused. The relevant paragraph is as under:-

“4. ... As rightly pointed out by the High Court search of baggage of a person is not the same thing as search of the person himself. In State of Punjab v. Baldev Singh this Court has held that the requirement of informing the accused about his right under Section 50 comes into existence only when person of the accused is to be searched. The decision of this Court in State of Punjab v. Jasbir Singh, wherein it was held that though poppy straw was recovered from the bags of the accused, yet he was required to be informed about his right to be searched in presence of a Gazetted Officer or a Magistrate, now stands overruled by the decision in Baldev Singh’s case (supra). If a person is carrying a bag or some other article with him and narcotic drug or the psychotropic substance is found from it, it cannot be said that it was found from his “person”. In this case heroin was found from a bag belonging to the appellant and not from his person and therefore it was not necessary to make an offer for search in presence of a Gazetted Officer or a Magistrate.”

(Emphasis supplied)

68. In **Sarjudas v. State of Gujarat** reported in (1999) 8 SCC 508, the contraband was recovered from a bag which was hanging on the accused’s scooter, which he was riding. This Court while holding the bag not to be included in the “search of the person” held as under:-

“4. What is contended by the learned Counsel for the appellant is that the appellants were not informed of their right under Section 50 of the NDPS Act that they were entitled to be examined in presence of a gazetted officer or a Magistrate and, therefore, the search of the appellants was illegal and the evidence regarding recovery of charas from their possession could not have been relied upon.

5. We do not find any substance in this contention as the charas was not found on the person of the appellants but it was found kept in a bag which was hanging on the scooter on which they were riding. Therefore, this was not a case where the person of the accused was searched and from his person narcotic drug or psychotropic substance was found. The correct position of the law on this point has been stated by this Court in State of Punjab v. Baldev Singh” (Emphasis supplied)

69. In **Birakishore Kar v. State of Orissa** reported in (2000) 9 SCC 541, the contraband was recovered from a plastic bag on which the accused was sitting while travelling in a train. As the body of the accused was not searched, Section 50 was held to be inapplicable. This Court held as under:-

“3. What is now contended by the learned counsel for the appellant is that the mandatory requirement of Section 50 of the NDPS Act, 1985, viz., that the person to be searched should be told about his right to be examined in the presence of a Magistrate or a gazetted officer was not complied with in this case. This contention is really misconceived. In this case it was not the person of the appellant which was searched. He was found sitting on a plastic bag which belonged to him and which contained poppy straw. As pointed out by this Court in State of Punjab v. Baldev Singh [(1999) 6 SCC 172], Section 50 would come into play only in the case of search of a person as distinguished from search of any premise etc. As we do not find any substance in this appeal, it is dismissed.” (Emphasis supplied)

70. In **Kanhaiya Lal v. State of M.P.** reported in (2000) 10 SCC 380, opium was recovered from the bag which was being carried by the accused. Section 50 was not made applicable as it was held that the recovery was made from the bag and not the person, and it was held as under:-

“2. The only point raised in this appeal is that the mandatory requirement of Section 50 of the Act was not complied with in this case and therefore the conviction of the appellant is illegal. In our opinion, there is no substance in this contention because 1 kg of opium was not found from the person of the appellant but it was found from a bag which was being carried by the appellant. Therefore, this cannot be said to be a case where on search of the person of the accused, a narcotic drug or psychotropic substance was found. In our opinion,

the courts below have correctly held that the appellant is guilty of committing the said offence. The appeal is, therefore, dismissed.”

(Emphasis supplied)

71. Similarly, in **Gurbax Singh v. State of Haryana** reported in (2001) 3 SCC 28, the accused therein was apprehended while disembarking from a train carrying a gunny bag containing poppy straw weighing 7 kgs. The counsel for the State therein argued that the procedure under Section 50 was not required to be followed as nothing was recovered from the person. This Court while accepting the said argument and referring to **Baldev Singh** (supra) held that:-

“8. In view of the aforesaid decision of the Constitutional Bench, in our view, no further discussion is required on this aspect. However, we may mention that this right is extension of right conferred under Section 100(3) of the Criminal Procedure Code. Sub-Section (1) of Section 100 of the Code provides that whenever any place liable to search or inspection is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein. Sub-Section (3) provides that where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. Sub-section (7) of Section 100 further provides that when any person is searched under sub-section (3) a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person. This would also be clear if we refer to search and seizure, procedure provided under Sections 42 and 43 of the building, conveyance or place. Hence, in our view, Section 50 of the NDPS Act would be applicable only in those cases where the search of the person is carried out.” (Emphasis supplied)

72. In **Beckodan Abdul Rahiman v. State of Kerala** reported in (2002) 4 SCC 229, the contraband had been recovered from a polythene bag hidden in the folds of the dhoti, which the accused was wearing. The Court

acquitted the accused as Section 50 was not complied with while searching the accused. It was held as under:-

“3. ... After referring to a host of judgments, the Constitution Bench of the Court held that the provisions of Sections 42 and 50 are mandatory and their non- compliance would render the investigation illegal. It was reiterated that severer the punishment, greater the care to be taken to see that all the safeguards provided in the statute are scrupulously followed. The safeguards mentioned in Section 50 are intended to serve a dual purpose — to protect the person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer. If the empowered officer fails to comply with the requirements of the Section, the prosecution is to suffer for the consequences. The legitimacy of the judicial process may come under the 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.

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5. ... Similarly the provisions of Section 50 have not been complied with as the accused has not been given any option as to whether he wanted to be searched in presence of a gazetted officer or the Magistrate. The compliance of Section 50 is held to have been fulfilled on his (PW 1) asking the accused “whether I should search him in the presence of senior officers or gazetted officer”. The accused was required to be apprised of his right conferred under Section 50 giving him the option to search being made in presence of a gazetted officer or the Magistrate. The accused is not shown to have been apprised of his right nor any option offered to him for search being conducted in the presence of the Magistrate.

6. We are of the firm opinion that the provision of sub-section (2) of Section 42 and the mandate of Section 50 were not complied with by the prosecution, which rendered the case as not established. In view of the violation of the mandatory provision of the Act, the appellant was entitled to be acquitted. ...”

(Emphasis supplied)

73. In ***Madan Lal v. State of Himachal Pradesh*** reported in (2003) 7 SCC 465, the recovery was effected from the search of a bag placed inside the accused person's car. This Court, while differentiating between the search of a person and a vehicle in terms of the applicability of Section 50, held as under:-

“16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (See *Kalema Tumba vs. State of Maharashtra and Anr.*, *State of Punjab vs. Baldev Singh*, *Gurbax Singh vs. State of Haryana*). The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's case* (*supra*). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.”

(Emphasis supplied)

74. In ***State of Punjab v. Makhan Chand*** reported in (2004) 3 SCC 453, the accused was apprehended from a bus with a tin box in his hand from which the contraband was recovered. The High Court therein had acquitted the accused on the ground of non-compliance of Section 50. On the finding that Section 50 would apply to the case, the judgment of the High Court was reversed and the accused was convicted. It was held that:-

“7. Apart from the aforesaid question, we are also of the view that Section 50 of the Act would not apply to a situation where the search undertaken is not of the person of the accused but of something carried in his hand. ...”

(Emphasis supplied)

75. In another decision of this Court in ***Saikou Jabbi v. State of Maharashtra*** reported in (2004) 2 SCC 186, the contraband was recovered from the accused's suitcase after its screening. This Court held that when the suitcase was searched during the screening, the same cannot be considered to be a personal search of the accused, and held as under:-

“11. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. (See *Kalema Tumba v. State of*

Maharashtra, State of Punjab v. Baldev Singh and Gurbax Singh v. State of Haryana). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh* case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.

12. In the case at hand, the contraband articles were suspected to be hidden in the blue suitcase of the accused, and was not in his physical possession. The suitcase was put on the screening machine. This cannot be equated with a recovery made from the person of the accused by a personal search.”

Test of item being inextricably linked to person

76. This Court gave another interpretation, wherein it said that the items such as bags or containers which are “inextricably linked” to the person of the accused should be included within the ambit of Section 50. As a result, a wider meaning was given to the word “person”.

77. In *Namdi Francis Nwazor v. Union of India* reported in (1998) 8 SCC 534, the luggage of a foreign national was searched on the basis of some information. Nothing incriminating was recovered from the hand bags, but narcotics were recovered from the check-in baggage. Accordingly, he was charged under the NDPS Act. The petitioner therein pleaded that there was non-compliance with Section 50 while searching his baggage. This Court while dismissing the appeal held that as the bag was not in the immediate possession of the accused, there was no requirement to comply with Section 50. However, this Court went on to elaborate that had the contraband been recovered from the handbags, which were on the person of the accused at the time of the search, Section 50 would have to be complied with. The relevant observations made by the three-Judge Bench are as under:-

“3. On a plain reading of sub-section (1) of Section 50, it is obvious that it applies to cases of search of any person and not search of any article in the sense that the article is at a distant place from where the offender is actually searched. This position becomes clear when we

refer to Sub-section (4) of Section 50 which in terms says that no female shall be searched by anyone excepting a female. This would, in effect, mean that when the person of the accused is being searched, the law requires that if that person happens to be a female, the search shall be carried out only by a female. Such a restriction would not be necessary for searching the goods of a female which are lying at a distant place at the time of search. It is another matter that the said article is brought from the place where it is lying to the place where the search takes place but that cannot alter the position in law that the said article was not being carried by the accused on his or her person when apprehended. We must hasten to clarify that if that person is carrying a handbag or the like and the incriminating article is found therefrom, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act. However, when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that it was not found on the accused person. So, on the facts of this case, it is difficult to hold that Section 50 stood attracted and non-compliance with that provision was fatal to the prosecution case.” (Emphasis supplied)

78. Thereafter, in **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** reported in (2000) 2 SCC 513, this Court (a three-Judge Bench) adopted a similar approach. It is relevant to note that the Bench was presided over by Dr. A.S. Anand, CJ, who authored the Constitution Bench decision in **Baldev Singh** (supra). In the said matter, four gunny bags were found in an auto rickshaw, which the accused was driving and no other person was present. The argument based on non-compliance of Section 50 as explained in the case of Baldev Singh (supra) was rejected on the ground that the gunny bags were not inextricably connected with the person of the accused. It was held that:-

“12. In the present case, even the appellant has no case that he was searched by the police party. The place where the gunny bags were found stacked in the vehicle was not inextricably connected with the person of the appellant. Hence it is an idle exercise in this case, on

the fact-situation, to consider whether there was non-compliance with the conditions stipulated in Section 50 of the Act.”

(Emphasis supplied)

79. Thereafter, in ***Yasihey Yobin. v. Department of Customs, Shillong*** reported in (2014) 13 SCC 344, the test of an item being “inextricably linked to the person” was laid down while relying upon ***Namdi*** (supra). This Court held that in cases where the line of separation between the search of a person and an artificial object is thin and fine, the test of inextricable connection should be applied and then conclusion should be reached whether the search was that of a person or not. It was held that:-

“10. This position in law is settled by the Constitution Bench in the case of State of Punjab v. Baldev Singh, and in Megh Singh v. State of Punjab, (2003) 8 SCC 666, where application of Section 50 is only in case of search of a person as contrasted to search of premises, vehicles or articles. But in cases where the line of separation is thin and fine between search of a person and an artificial object, the test of inextricable connection is to be applied and then conclusion is to be reached as to whether the search was that of a person or not. The above test has been noticed in the case of Namdi Francis Nwazor v. Union of India and Anr. (1998) 8 SCC 534, wherein it is held that if the search is of a bag which is inextricably connected with the person, Section 50 of the Act will apply, and if it is not so connected, the provisions will not apply. It is when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that the bag was not found on the accused person.

11. In the instant case, the bag is brought by A-2 and the contents of the bag are taken out by him and given for search which is thereafter seized by the officials after having found contraband substance. In such a case the inextricable connection between the search of a person and the bag cannot be established but rather it is only the search of the bag and therefore the search and seizure conducted by the gazetted officer need not comply with the requirements under Section 50 of the Act.”

(Emphasis supplied)

80. However, it is important to note that the law down in *Yasihey* (supra) is no longer a good law. A three-Judge Bench in *State of H.P. v. Pawan Kumar* reported in (2005) 4 SCC 350, distinguished *Namdi* (supra) and held that the observations relied upon in it were obiter on this point. It was held as under:-

“16. ... The Bench then finally concluded that on the facts of the case Section 50 was not attracted. The facts of the case clearly show that the bag from which incriminating article was recovered had already been checked in and was loaded in the aircraft. Therefore, it was not at all a search of a person to which Section 50 may be attracted. The observations, which was made in the later part of the judgment (reproduced above), are more in the nature of obiter as such a situation was not required to be considered for the decision of the case. No reasons have been given for arriving at the conclusion that search of a handbag being carried by a person would amount to search of a person. It may be noted that this case was decided prior to the Constitution Bench decision in State of Punjab v. Baldev Singh. After the decision in Baldev Singh, this Court has consistently held that Section 50 would only apply to search of a person and not to any bag, article or container, etc. being carried by him.”

(Emphasis supplied)

The term “person” ought to be construed strictly

81. The decision of the larger Bench in *Pawan Kumar* (supra) came as a result of a reference by a Division Bench of this Court in *State of H.P. v. Pawan Kumar* reported in (2004) 7 SCC 735. In the said matter, opium was recovered from the accused’s bag upon a search conducted by a constable. The High Court acquitted the accused as during the search of the bag, Section 50 was not complied with. Justice Y.K. Sabharwal agreeing with the High Court’s order held that since the bag was inextricably linked to the accused, Section 50 ought to have been complied with. The finding recorded by Justice Sabharwal are reproduced hereunder:-

“21. The case of the prosecution itself is that the accused was carrying a bag on his shoulder; opium like smell was coming from the bag; and the Head Constable informed the Deputy Superintendent of Police who

came to the spot. Before search, the Deputy Superintendent of Police was informed of the suspected possession of the opium. The testimony of PW 7 is that the person of the accused was then searched by the Deputy Superintendent of Police and on search, bag containing opium was found. On this fact situation, it cannot be held that the search was not of a person but was of a bag. Both are inextricably connected. It has to be held that the search was that of the respondent's person. Clearly, Section 50 of the NDPS Act was applicable but was not complied. Therefore, the conviction of the respondent could not be sustained and the High Court rightly held that Section 50 had been breached."

82. Justice Arijit Pasayat while relying upon **Gurbax Singh** (supra) differed from Justice Sabharwal and held that the non-compliance with Section 50 would not render the recovery as inadmissible as the recovery was from the bag and not from the person of the accused. Justice Pasayat held as under:-

"24. Baldev Singh's case (supra) made the position clear that the said provision has application in case of search of a person. The crucial question would be whether search of a bag carried on the shoulder or back of a person is covered by Section 50. I am of the view that it would not be so. There can be no basis for making a distinction between search of a bag found near a person and a bag carried by him. In Kanhaiya Lal v. State of M.P., (2000) 10 SCC 380, it was held that when a bag carried by the accused is searched, Section 50 has no application. In Gurbax Singh v. State of Haryana, (2001) 3 SCC 28, it was held that when a bag was being carried on the accused's shoulder, Section 50 has no application."

83. Accordingly, the matter was referred to a larger bench and came to be decided in **Pawan Kumar** (supra) wherein the view taken by Justice Pasayat was affirmed. This Court held that the term "person" under Section 50 would mean a natural person or a living unit and not an artificial person i.e., a bag or a briefcase.

84. The case of the prosecution in **Pawan Kumar** (supra) was that two head constables namely, Hukum Singh and Munshi Ram and some police personnel were checking buses at the bus - stand, Mandi in the night of 18.07.1994. While checking a bus at about 8.45 p.m., they noticed that the

accused Pawan Kumar (respondent accused therein), who was carrying a bag, slipped out from the rear door of the bus and thereafter started running towards the Subzi Mandi side. The police personnel got suspicious and after a chase apprehended him near the gate of bus stand. They felt smell of opium emitting from the bag, and, therefore, telephonically informed Prem Thakur, Deputy S.P./S.H.O., P.S. Sadar, Mandi. Prem Thakur came to the spot and inquired from the accused whether he wanted to be searched by police or by a Magistrate. The accused disclosed his name and expressed his willingness to be searched by the police. A search of the accused and the bag being carried by him was then conducted and 360 gms. of opium wrapped in polythene was found inside the bag.

85. This Court interpreted Section 50 strictly and stated that the cardinal rule of interpretation of statutes is to read the statute literally and give the words their grammatical and natural meaning. In this regard, it was held as under:-

“8. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (See Craies on Statute Law, Seventh ed. page 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary (See the Chapter - The Rule of Literal Construction -p. 78 – 9th Edn.). This Court has also followed this principle right from the beginning. In Jugalkishore Saraf v. Raw Cotton Co. Ltd.: (1955) 1 SCR 1369, S.R. Das, J. said:-

“The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.” (Emphasis supplied)

86. The larger Bench also considered the dictionary meanings of the word “person” and held that any article like a bag, briefcase or container cannot under any circumstance be considered as a person or a part thereof. This Court stated that one of the tests could be, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search. If that be so, then it will be search of a person. However, this Court was quick to clarify that a bag or briefcase or any such article cannot be interpreted to mean a person. It was held as under:-

“10. We are not concerned here with the wide definition of the word “person”, which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the Section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word “person” appears to be – “the body of a human being as presented to public view usually with its appropriate coverings and clothings”. In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one’s home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the

body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

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

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the word "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by Sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made.

“18. There is another aspect of the matter, which requires consideration. Criminal law should be absolutely certain and clear and there should be no ambiguity or confusion in its application. The same principle should apply in the case of search or seizure, which come in the domain of detection of crime. The position of such bags or articles is not static and the person carrying them often changes the manner in which they are carried. People waiting at a bus stand or railway platform sometimes keep their baggage on the ground and sometimes keep in their hand, shoulder or back. The change of position from ground to hand or shoulder will take a fraction of a second but on the argument advanced by learned counsel for the accused that search of bag so carried would be search of a person, it will make a sharp difference in the applicability of Section 50 of the Act. After receiving information, an officer empowered under Section 42 of the Act, may proceed to search this kind of baggage of a person which may have been placed on the ground, but if at that very moment when he may be about to open it, the person lifts the bag or keeps it on his shoulder or some other place on his body, Section 50 may get attracted. The same baggage often keeps changing hands if more than one person are moving together in a group. Such transfer of baggage at the nick of time when it is about to be searched would again create practical problem. Who in such a case would be informed of the right that he is entitled in law to be searched before a Magistrate or a gazetted officer? This may lead to many practical difficulties. A statute should be so interpreted as to avoid unworkable or impracticable results. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner :

“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong.”

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26. *The Constitution Bench decision in Pooran Mal v. The Director of Inspection: (1974) 1 SCC 345, was considered in State of Punjab v. Baldev Singh, and having regard to the scheme of the Act and especially the provisions of Section 50 thereof it was held that it was not possible to hold that the judgment in the said case can be said to have laid down that the “recovered illicit article” can be used as “proof of unlawful possession” of the contraband seized from the suspect as a result of illegal search and seizure. Otherwise, there would be no distinction between recovery of illicit drugs, etc. seized during a search conducted after following the provisions of Section 50 of the Act and a seizure made during a search conducted in breach of the provisions of Section 50. Having regard to the scheme and the language used a very strict view of Section 50 of the Act was taken and it was held 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 sentence of an accused bad and unsustainable in law. As a corollary, there is no warrant or justification for giving an extended meaning to the word “person” occurring in the same provision so as to include even some bag, article or container or some other baggage being carried by him.”* (Emphasis supplied)

89. Thus, in **Pawan Kumar** (supra) the larger Bench while answering the reference in no uncertain terms stated that “a bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being.” The Court reasoned that a person of varying capacity can carry different items on his or her body but that does not make those items as a part of body. The Court observed, “Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc.” Therefore, **Pawan Kumar** (supra) concluded

that an external article which does not form part of body is outside the ambit of the word “person” occurring in Section 50 of the NDPS Act.

90. What is most important to note in *Pawan Kumar* (supra) is that the search was not only of the bag, but also of the person of the accused, however, the contraband was recovered only from the bag and not from the person of the accused therein. What we are trying to highlight is that although in *Pawan Kumar* (supra) the search was of the accused as well as the bag, yet since the recovery of the contraband was only from the bag, this Court took the view that Section 50 would have no application.

91. In *State of Rajasthan v. Daulat Ram* reported in (2005) 7 SCC 36, opium was recovered from a bag being carried on the accused person’s head. This Court while relying upon *Pawan Kumar* (supra) held that the recovery made from the accused person’s bag would not constitute personal search of the accused and thus, would not attract Section 50. It was held as under:-

“9. ... In view of the principles laid down in the aforesaid judgment of this Court, there is no scope for the argument that in the facts and circumstances of this case, the provisions of Section 50 of the NDPS Act were attracted. The judgment and order of the High Court must, therefore, be set aside.”

92. This Court in *State of Haryana v. Mai Ram* reported in (2008) 8 SCC 292, while examining the scope of Section 50 held as under:-

“14. ... A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See Kalema Tumba v. State of Maharashtra, State of Punjab v. Baldev Singh and Gurbax Singh v. State of Haryana).

15. The language of Section 50 is implicitly (sic explicitly) clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case [(1999) 6 SCC 172]. A similar question was examined in Madan Lal v. State of H.P. [(2003) 7 SCC 465].”

93. In **Balbir Kaur v. State of Punjab** reported in (2009) 15 SCC 795, the contraband was recovered from two bags on which the accused was sitting but no personal search was conducted. This Court while holding that Section 50 would not be applicable held as under:-

“22. It is also to be noted at this stage that the recovery of poppy husk was made from the bags carried by the appellant, so the submission that there was violation of the provisions of Section 50 is legally untenable.”

94. The aforesaid view was affirmed in the case of **Ajmer Singh v. State of Haryana** reported in (2010) 3 SCC 746, wherein while searching the shoulder bag of the accused, some contraband was recovered. This Court held that compliance under Section 50 was not warranted and stated as under:-

“15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, brief case etc., carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance of Section 50 of the NDPS Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, brief case, container, etc., does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res-integra in view of the observations made by this court in the case of Madan Lal vs. State of Himachal Pradesh (2003) 7 SCC 465.” (Emphasis supplied)

95. **Pawan Kumar** (supra) was also relied upon in **Jarnail Singh v. State of Punjab** reported in (2011) 3 SCC 521. In the said case, opium was recovered from a bag which the accused was carrying. Section 50 was held to be not applicable as accused was not searched. It was held that:-

“16. This apart, it is accepted that the narcotic/opium, i.e., 1 kg. and 750 grams was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be

applicable. The aforesaid Section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted.” (Emphasis supplied)

96. In **Suresh v. State of Madhya Pradesh** reported in (2013) 1 SCC 550, illicit articles were recovered from the polythene bags placed in a vehicle found to be in the possession of the accused person upon their personal search. This Court held that though the requirement of Section 50 was not complied with qua the personal search of the accused, yet the provision was inapplicable qua the recovery made from the vehicle. Therefore, this Court gave a restricted interpretation to Section 50 and held as under:-

“19. Though a portion of the contraband (opium) was recovered from the vehicle for which Section 50 is not applicable, if we exclude the quantity recovered from the vehicle, the remaining would not come within the mischief of “commercial quantity” for imposition of such conviction and sentence. Taking note of the length of period in prison and continuing as on date and in view of non-compliance with sub-section (1) of Section 50 in respect of recovery of contraband from the appellants, we set aside the conviction and sentence imposed on them by the trial court and confirmed by the High Court.”

(Emphasis supplied)

97. Accordingly, Section 50 was read to be understood as applicable only to the personal search of a person and that would not extend to search of a vehicle or a container or a bag. The language of Section 50 was interpreted to include search in relation to a person and not to a search of premises, vehicles or articles.

Judgments taking the view that Section 50 must be complied with when search of a bag as well as that of a person is carried out

98. However, in **Dilip v. State of M.P.** reported in (2007) 1 SCC 450, a contrary view was taken to that of **Pawan Kumar** (supra). In the said case, Section 50 was not complied with while conducting the search of the person and drugs were recovered from the accused’s scooter. This Court

while acquitting the accused held that the recovery made from the scooter ought to be inadmissible. It is pertinent to note that in this case the judgement in **Pawan Kumar** (supra) was not looked into. The Court held as under:-

“12. Before seizure of the contraband from the scooter, personal search of appellants had been carried out and, admittedly, even at that time the provisions of Section 50 of the Act, although required in law, had not been complied with.

x x x x

15. Indisputably, however, effect of a search carried out in violation of the provisions of law would have a bearing on the credibility of the evidence of the official witnesses, which would of course be considered on the facts and circumstances of each case.

16. In this case, the provisions of Section 50 might not have been required to be complied with so far as the search of scooter is concerned, but, keeping in view the fact that the persons of the appellants were also searched, it was obligatory on the part of PW 10 to comply with the said provisions. It was not done.”

(Emphasis supplied)

99. The decision of **Dilip** (supra) was relied upon in **Union of India v. Shah Alam** reported in (2009) 16 SCC 644, wherein packets of heroin were recovered from the accused’s shoulder bag. This Court rejected the argument of the State that Section 50 was not applicable as no further recoveries were made from the person of the accused after the recovery from the bag. Accordingly, the recovery was held to be in violation of Section 50 and the accused’s acquittal was upheld. It was held that:-

“15. The legal proposition advanced by Mr. Terdal, based on the distinction between search of someone’s person and the baggage carried by him/her is unexceptionable but his submission is not supported by the facts of this case. We have carefully gone through the records of this case. From the evidence of the complainant, PW 1 and the seizure memo (fard baramdegi) Ext Ka-2 it is evident that the two respondents were subjected to a body search in course of which packets of heroin were found in the shoulder bags carried by them and were recovered from there.

16. *The facts of the case in hand are very close to another decision of this Court in Dilip and Anr. v. State of M.P. where it was observed in paragraphs 12, 15 and 16 as under: ...*

17. *On the facts of the case we find that the alleged recovery of heroin from the respondents was made in complete violation of the provisions of Section 50 of the Act.”*

100. A similar view was taken by a Division Bench of this Court in **Parmanand** (supra). This Court was called upon to consider whether Section 50 ought to apply when the search of the person and his bag is carried out. This Court held that if the bag is searched without searching the accused, then Section 50 would have no application. However, as a corollary it was held that if the bag carried by the accused is searched along with his search, then Section 50 would be applicable. The relevant portion is as under:-

“15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.” (Emphasis supplied)

101. **Parmanand** (supra) was relied upon by a three-Judge Bench in **SK. Raju** (supra). In the said case, the police received information that a drug dealer was likely to visit a park. The accused after being apprehended was searched and was found to be in possession of 1.5 kgs of charas, which was recovered from a jute bag he was carrying. This Court, while holding that the search was not vitiated as Section 50 was complied with, held that whenever a person and his or her bag is searched, irrespective from where the recovery is made, Section 50 must be complied with. It stated that:-

“20. The question which arises before us is whether Section 50(1) was required to be complied with when charas was recovered only from the bag of the appellant and no charas was found on his person.

Further, if the first question is answered in the affirmative, whether the requirements of Section 50 were strictly complied with by PW 2 and PW 4.

21. ... The appellant agreed to search PW 2 before the latter carried out his search. On conducting the search, only personal belongings of PW 2 were found by the Appellant. On the search of the appellant in the presence of the gazetted officer, a biscuit-coloured jute bag was recovered from the Appellant, and Rs. 2400 cash in the denomination of 24 notes of Rs. 100 each was found in the left pocket of the Appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish/deep brown colour weighing 1.5 kilograms was recovered. The sheets were tested and were found to be charas.

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

102. Thus, one view which originated from **Dilip** (supra) and relied upon in **SK. Raju** (supra) implied that if a person is searched and along with him or her, his or her bag is also searched, then the benefit of Section 50 should be extended while conducting the personal search of the accused.

103. However, it is pertinent to note that although **Pawan Kumar** (supra) has been referred to and considered in **SK. Raju** (supra) yet, the Court in **SK. Raju** (supra) overlooked the fact that in **Pawan Kumar** (supra) also the search was not only of the person of the accused but also of his bag. Even in such circumstances, the larger Bench in **Pawan Kumar** (supra) took the view that Section 50 would not apply if nothing incriminating is

Section 50 not applicable when recovery made from bag, conveyance, etc.

“8. ...

*the search of the vehicle results in recovery of contraband material,
which stands proved independently;*

105. In the aforesaid case, poppy husk was recovered from the accused's vehicle. This Court, while explaining the object of Section 50 and relying on the Constitution Bench judgement in *Vijaysinh Chandubha Jadeja* (supra), held that:-

“10. Section 50 of the Act affords protection to a person in matters concerning “personal search” and stipulates various safeguards. It is only upon fulfilment of and strict adherence to said requirements that the contraband recovered pursuant to “personal search” of a person can be relied upon as a circumstance against the person.

$$x \qquad x \qquad x \qquad x$$

12. Subsequently, another Constitution Bench of this Court in Vijaysinh Chandubha Jadeja vs. State of Gujarat, had an occasion to consider the case from the standpoint whether the person who is about to be searched ought to be informed of his right that he could be searched in the presence of a gazetted officer or a Magistrate. While considering the said question, this Court also dealt with the judgment rendered in Baldev Singh's case and the discussion in paragraphs 24 and 29 was as under:

“24. Although the Constitution Bench in Baldev Singh case [(1999) 6 SCC 172] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to “inform” the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to “inform” the suspect about the existence of his said right would cause prejudice to him, 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 the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

x x x x

29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power; to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer

under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.” (Emphasis supplied)

106. The Court went on to hold that Section 50 would be applicable only to the personal searches and not to the searches of vehicles or bags. This was in line with the ratio laid down in **Pawan Kumar** (supra) and **Baldev Singh** (supra). This Court held that:-

“15. As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to “personal search” and not to search of a vehicle or a container or premises.

16. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based “only” on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.”

(Emphasis supplied)

107. It is pertinent to note here that in **Baljinder Singh** (supra) the decision of **SK. Raju** (supra) was not looked into, however, the decision

in the case of **Dilip** (supra) was considered and held to be not laying down the correct law on the ground that it did not consider the decision of **Baldev Singh** (supra). This Court held that:-

“18. The decision of this Court in Dilip’s case, however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip’s case is not correct and is opposed to the law laid down by this Court in Baldev Singh and other judgments.”

(Emphasis supplied)

Settling the conflict between SK. Raju and Baljinder Singh

108. The High Court of Delhi in **Akhilesh Bharti v. State** reported in 2020 SCC OnLine Del 306 : (2020) 266 DLT 689, had the occasion to look into the cleavage of opinion expressed in **Baljinder Singh** (supra) and **SK. Raju** (supra). The High Court therein, noted the thin line of distinction drawn by **SK. Raju** (supra) where the contraband is recovered from an object which is held by the accused in his hand. In such a situation the High Court held that even if nothing is recovered from the person, Section 50 ought to be complied with. The High Court held as under:-

“26. It is essential to observe that vide the verdict of the Hon’ble three Judge Bench of the Hon’ble Supreme Court dated 05.09.2018 in “SK. Raju alias Abdul Haque alias Jagga Vs. State of West Bengal” (2018) 9 SCC 708, it has specifically been observed to the effect that where merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act, 1985 will have no application but if the personal search of the accused is also conducted, the provisions of Section 50 of the NDPS Act, 1985 would wholly apply. The verdict of the Hon’ble Supreme Court dated 15.10.2019 in “State of Punjab Vs. Baljinder Singh and Another” is also a verdict of the Hon’ble three Judge Bench of the Hon’ble Supreme Court in which the personal search of the accused did not result into recovery of any contraband but there was a recovery of contraband effected

from the vehicle in which the accused persons were seated with one of them being the driver. Though, the Hon'ble Supreme Court in "State of Punjab Vs. Baljinder Singh and Another" (supra) has observed to the effect that the judgment of the Hon'ble Supreme Court in Dilip's case is not correct and is opposed to the decision to the law laid down by the Hon'ble Supreme Court in Baldev Singh's and other judgments, the observations in the verdict of the Hon'ble Supreme Court in "S.K. Raju alia Abdul Haque alias Jagga Vs. State of West Bengal" (supra) dated 05.09.2018 (which are not adverted to in "State of Punjab Vs. Baljinder Singh and Another" (supra) dated 15.10.2019) lay down a fine distinction and in these circumstances thus, where the contraband is recovered from an object which is held by an accused in his hand and the search of the person of such an accused is also conducted which lead to no recovery of any contraband, though, there are recoveries of other personal assets of a person from his personal search, in view of the judgments of the Hon'ble Supreme Court in "SK. Raju alia Abdul Haque alias Jagga Vs. State of West Bengal" (supra), the non compliance of Section 50 of the NDPS Act, 1985 would prima facie vitiate the recovery." (Emphasis supplied)

109. **Akhilesh Bharti** (supra) referred to above was considered by a co-ordinate Bench of the Delhi High Court in **Kamruddin v. State (NCT of Delhi)**, 2022 SCC OnLine Del 3761, and held as under:-

"23. In the decision of S.K. Raju (supra), the Hon'ble Supreme Court has clearly held that since the search of the person of the appellant therein was also involved, therefore, Section 50 of the NDPS Act would be attracted in that case and accordingly the requirement of Section 50(1) of the NDPS Act was insisted.

24. So far as the decision relied upon by learned APP for the state in the case of State of HP Vs. Pawan Kumar is concerned, it is to be stated that in paragraph No. 17 of the decision in the case of S.K. Raju (supra) the Hon'ble Supreme Court has taken note of the decision in the case of Pawan Kumar (supra). The distinction between the two situations has been considered and if a bag, article or container etc. being carried by an accused is subjected to search independently without there being any search of the person of the appellant, the decision in

the case of Pawan Kumar (supra) would have application. However, in a case where the person of accused is subjected to search along with the search of bag, article or container which he holds in his hand, there is requirement of compliance of Section 50 of the NDPS Act.”

(Emphasis supplied)

110. It appears that the Delhi High Court laboured under an erroneous impression that in **Pawan Kumar** (supra) the search was only of the bag and not of the accused. However, at the cost of repetition, we state that in **Pawan Kumar** (supra) the search was of both the accused as well as the bag which he was carrying. This is evident from para 2 of the judgment in **Pawan Kumar** (supra) wherein it has been observed as under:-

“2. ... A search of the accused and the bag being carried by him was then conducted and 360 gm of opium wrapped in polythene was found inside the bag. ...”

(Emphasis supplied)

111. In **Than Kunwar v. State of Haryana** reported in (2020) 5 SCC 260, this Court took a different view. In the said case, the personal search of the accused did not lead to any recovery. However, upon conducting the search of the bag, opium was recovered. This Court acknowledged the divergent views and noted that the decision of **SK. Raju** (supra) was not considered while deciding **Baljinder Singh** (supra). However, the latter was applied and was read to be in line with **Baldev Singh** (supra). It was held that:-

“22. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in Dilip (supra) reliance placed by the appellant on para 16 may not be available. As already noticed, we are not oblivious of the observation which has been made in the other three-Judge Bench judgment of this Court in SK. Raju (supra), which it appears, was not brought to the notice to the Bench which decided the case later in Baljinder Singh (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in Baldev Singh (supra). We also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag

for which it is settled law that compliance with Section 50 of the Act is not required.”

(Emphasis supplied)

112. **Baljinder Singh** (supra) was followed by this Court in **Kallu Khan v. State of Rajasthan** reported in 2021 SCC OnLine 1223, wherein the search and seizure was made from the accused’s motorcycle. This Court while holding that the search cannot be said to be vitiated on account of non-compliance of Section 50 as the same only applies to a search of a person, held as under:-

“15. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this case, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled.”

(Emphasis supplied)

113. Similarly, in a recent judgement, this Court in **Dayalu Kashyap v. State of Chhattisgarh** reported in (2022) 12 SCC 398, held that an extended view of Section 50 cannot be given to include a polythene bag containing narcotics being carried by the accused. This Court rejected the argument that as three options were given to the accused to get himself searched from the officer which was in violation of Section 50, the search conducted, even of the polythene bag, ought to be vitiated. It was held as under:-

“4. The learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-section (1) of Section 50 of the Act is something which

goes contrary to the mandate of the law and in a way affects the protection provided by the said section to the accused. To support his contention, he has relied upon the judgment of State of Rajasthan v. Parmanand [State of Rajasthan v. Parmanand, (2014) 5 SCC 345], more specifically, SCC para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172] to conclude that if a search is made by an empowered officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery from him is vitiated.

5. In the conspectus of the facts of the case, we find that the recovery was in a polythene bag which was being carried on a kanwad. The recovery was not in person. The learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by the learned counsel for the appellant.”

(Emphasis supplied)

FINAL ANALYSIS

114. The only idea with which we have referred to the various decisions of this Court starting with **Balbir Singh** (supra) till **Dayalu Kashyap** (supra) is to highlight that Section 50 of the NDPS Act has been tried to be interpreted and understood in many ways. As noted earlier, in some of the decisions of this Court, the concept of “inextricably linked to person” was applied. In other words, if the bag, etc. is in immediate possession of the accused and the search is undertaken of such bag, etc., even then, according

to those decisions, Section 50 would be applicable. It could legitimately be argued that the interpretation of Section 50 restricting its scope only to the search of a person of the accused would frustrate the object as the apprehension of the person concerned may continue to subsist that he may still be implicated by the police or any other person for more stringent punishment of carrying commercial quantity by getting rid of the rigor of the mandatory provision of Section 50 by implanting the contraband in a vehicle, bag, etc. accompanying the person. What we are trying to convey has been explained in the case of *State v. Klein* [See : John C. Derrnbachet. al., A Practical Guide to Legal Writing and Legal Method (1994)]. In the said case, the issue before the U.S. Court was that whether a person can be held guilty for the offence of burglary more particularly when such person did not enter the house per se but tried to steal the object with the help of tree snips. The statute clearly declared that for burglary to happen, the defendant should be physically present. In this case, although the defendant never entered the house, yet he did extend his tree snips through the window. The Court held that, “there is no meaningful difference between the snips and his arm because the penetration by the snips was merely an extension of Klein’s person.” Therefore, in the said case, the object which a person was carrying was held to be part of his body. A similar view could also have been adopted while interpreting the term “personal search”. However, in view of plain and unambiguous statutory provision, there is no scope of interpreting Section 50 in any other manner than the interpretation explained in *Baldev Singh* (supra) and *Pawan Kumar* (supra).

115. It is a well-settled principle in law that the Court should not read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of the legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. Judge Learned Hand said, “*Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them*”. (See : *Lehigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*, (1990) 1 SCC 277.

116. In *D.R. Venkatchalam v. Dy. Transport Commissioner*, (1977) 2 SCC 273, it was observed that the Courts must avoid the danger of an *a priori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp the legislative function under the disguise of interpretation.

117. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See : *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*, (2000) 5 SCC 515). The legislative *casus omissus* should not be supplied by judicial interpretative process. The language of Section 50 of the NDPS Act is plain and unambiguous. There is no scope of reading something into it as was done in many decisions of this Court which we have referred to in our judgment.

118. Two principles of construction — one relating to *casus omissus* and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., in *Artemiou v. Procopiou*, (1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (at All ER p.544-I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2

WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664-I) “*This is not a new problem, though our standard of drafting is such that it rarely emerges.*”] (See : **Padma Sundara Rao (Dead) & Ors. v. State T.N. & Ors.**, (2002) 3 SCC 533)

119. As such, there is no direct conflict between **SK. Raju** (supra) and **Baljinder Singh** (supra). It is pertinent to note that in **SK. Raju** (supra) the contraband was recovered from the bag which the accused was carrying, whereas in **Baljinder Singh** (supra) the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being “inextricably linked to the person”. **Parmanand** (supra) relied upon the judgment in **Dilip** (supra) while taking the view that if both, the person of the accused as well as the bag is searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that **Dilip** (supra) has not taken into consideration **Pawan Kumar** (supra) which is of a larger Bench. It is also pertinent to note that although in **Parmanand** (supra) the Court looked into **Pawan Kumar** (supra), yet ultimately it followed **Dilip** (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the large Bench in **Pawan Kumar** (supra). **Baljinder Singh** (supra), on the other hand, says that **Dilip** (supra) does not lay down a good law.

120. In the facts of the present case, there is no scope of applying the ratio of **Parmanand** (supra) and **SK. Raju** (supra). At the cost of repetition, we may state that in the case on hand, there is nothing to indicate that the search of the person of the accused was also undertaken along with the bag which he was carrying on his shoulder.

121. We do not propose to say anything further as regards **SK. Raju** (supra) as well as **Baljinder Singh** (supra). We adhere to the principles of law as explained by the Constitution Bench in **Baldev Singh** (supra) and the larger Bench answering the reference in **Pawan Kumar** (supra).

122. It has been observed in **Baldev Singh** (supra) that drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but

illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nation Conventions which the Government of India has ratified. It is, therefore, absolutely imperative that those who indulge in this kind of nefarious activities should not go scot-free on technical pleas which come handy to their advantage in a fraction of second by slight movement of the baggage, being placed to any part of their body, which baggage may contain the incriminating article.

123. This matter reminds us of the observations made by a seven-Judge Bench of this Court in the case of **Keshav Mills Co. Ltd. v. Commissioner of Income Tax, Bombay North, Ahmedabad**, (1965) 2 SCR 908 : AIR 1965 SC 1636. We quote the relevant observations:-

“23. In dealing with the question as to whether the earlier decisions of this Court in the New Jehangir Mills case, [1960] 1 S.C.R. 249, and the Petlad Co. Ltd. case, [1963] Supp, 1 S.C.R. 871, should be reconsidered and revised by us, we ought to be clear as to the approach which should be adopted in such cases. Mr. Palkhivala has not disputed the fact that in a proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate. When this Court hears appeals against decisions of the High Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should

be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting its own view in preference to that of the High Court, this Court would be discharging its duty as a court of appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, Section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:- What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly

unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.”

(Emphasis supplied)

124. The aforesaid observations made by the seven-Judge Bench of this Court, more particularly the last three lines referred to above, “*These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.*” persuade us to say that we must adhere to the principle of law as explained by the Constitution Bench in **Baldev Singh** (supra) and the larger Bench in **Pawan Kumar** (supra).

125. For all the foregoing reasons, we are of the view that the High Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.

126. In the result, both the appeals fail and are hereby dismissed.

127. Pending application, if any, also stands disposed of accordingly.

Headnotes prepared by:
Bibhuti Bhushan Bose
Assisted by: Neha Sharma, LCRA

Appeals dismissed.