

Supreme Court of India

State Of Punjab vs Baldev Singh on 19 November, 1997

Equivalent citations: (1999) 6 SCC 172

Bench: M Mukherjee, S Kurdukar, K Thomas

ORDER

1. In this bunch of appeals/special leave petitions the following questions of law (besides other questions of law and facts) fall for determination:

(i) Is it the mandatory requirement of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, ("Act" i'or short) that when an officer, duly authorised under Section 42 of the Act, is about to search a person he must inform him of his right under Sub-section (1) thereof of being liken to the nearest Gazetted Officer or nearest Magistrate i'or making the search?

(ii) If any search is made without informing the person of his such right would the search be illegal even if he does not of his own exercise his right under Section 50(1)? And

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

2. The above questions came up for consideration before a two-Judge Bench of this Court in State of Punjab v. Balbir Singh, and it answered them as under: "On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial"

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

"The judgment in Pooran Mat case, only lays down that the evidence collected as a result of illegal search or seizure, could be used as evidence in proceedings against the party under the Income Tax Act. The judgment cannot be interpreted to lay down that a contraband seized as a result of illegal

search or seizure, can be used to fasten that liability of unlawful possession of the contraband on the person from whom the contraband had allegedly been seized in an illegal manner. "Unlawful possession" of the contraband is the sine qua non for conviction under the Narcotic Drugs & Psychotropic Substances Act and that factor has to be established by the prosecution beyond a reasonable doubt. Indeed the seized contraband is evidence but in the absence of proof of possession of the same, an accused cannot be held guilty under the Narcotic Drugs & Psychotropic Substances Act.

In view of the law laid down in Balbir Singh case, we hold that there has been violation of the provisions of Section 50 of Narcotic Drugs & Psychotropic Substances Act and consequently the conviction of the appellant cannot be sustained."

4. The judgment in Balbir Singh case, was affirmed by a three-Judge Bench in Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat, .

5. A discordant note was however struck by a two-Judge Bench of this Court in State of H.P. v. Pirthi Chand, relying upon the judgment of this Court in Pooran Mat case when it held that the evidence collected in a search in violation of law did not become inadmissible in evidence under the Evidence Act. The Court further observed that even if the search was found to be in violation of law, what weight should be given to the evidence collected was a question to be gone into during trial. The same view was reiterated by a two-Judge Bench in State of Punjab v. Labh Singh, with the observation that any evidence recorded and recovered in violation of the search and the contraband seized in violation of the mandatory requirement did not ipso facto invalidate the trial.

6. In our considered opinion the judgment of this Court in Saiyad Mohd. Saiyad Umar Saiyad case, (which was delivered by a three-Judge Bench) requires reconsideration and the questions formulated above answered by a larger Bench, not only in view of the subsequent judgments of this Court (delivered by a two-Judge Bench) referred to above, but also in view of the Constitution Bench judgment in Pooran Mal case,

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