

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPEAL NO. 20 OF 2022
WITH
CRIMINAL MISC. APPLICATION NO. 223 OF 2023 (F)
IN
CRIMINAL APPEAL NO. 20 OF 2022**

Mr. Subodh Levi, s/o Sambarbhushanam
Levi, age 21 years, labour work, n/o
Trilanga, Bhopal, Madhya Pradesh, convict
prisoner, presently in custody at Modern
Central Jail at Colvale, Bardez, Goa.

... Appellant

Versus

1. State, (Through Police Inspector, Anti
Narcotic Police Station, Panaji, Goa).
2. The Public Prosecutor, High Court of
Bombay at Goa, Porvorim, Goa.

... Respondents

Mr. Pavithran A.V., Advocate under the Legal Aid Scheme
for the Appellant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

CORAM: **BHARAT P. DESHPANDE, J.**

RESERVED ON: **19th SEPTEMBER 2024**

PRONOUNCED ON: **7th OCTOBER 2024**

JUDGMENT:

1. The Appeal was admitted on 24.03.2023 and thereafter,
Record & Proceedings were called and on furnishing a paperbook,

the matter was taken up for final disposal since the Accused is in custody.

2. Heard Mr. Pavithran who is appearing on legal aid basis for the Appellant and Mr. Pravin Faldessai, learned Additional Public Prosecutor for the State.

3. The Appellant has challenged the conviction and sentence passed by the learned Special Court vide judgment and order dated 13.10.2021, thereby holding the Appellant guilty for the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act, for short] and accordingly, sentencing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1 lakh and in default to suffer imprisonment for a period of one year.

4. The challenge to the impugned judgment is raised on three points as under:

- (a) That there is non-compliance of Section 50 of the NDPS Act;
- (b) That there is non-compliance of Section 52-A of the NDPS Act and
- (c) That the possibility of tampering with the contraband is evident.

5. The points for determination are as under together with my findings against it.

<u>Points for determination</u>	<u>Findings</u>
(I) Whether the Raiding Officer complied with Section 50 of the NDPS Act before searching the Accused ?	In the Affirmative
(II) Whether the Incharge of the Police Station complied with Section 52-A of the NDPS Act on receipt of the contraband from the Raiding Officer ?	
(III) Whether the prosecution proved that the contraband sealed at the spot, is the same which was forwarded to the Laboratory and was found to be the narcotic substance ?	

SUBMISSIONS OF APPELLANT:

6. Mr. Pavithran in his elaborate submissions would submit that there is a clear breach of Section 50 of the NDPS Act as the Accused was not informed about his right to be searched before the Gazetted Officer or the Magistrate. He would submit that the Pancha nowhere disclosed the actual words spoken by the Raiding Officer in Hindi, while informing the Accused of his actual right, as what the Raiding Officer deposed in his evidence. According to Mr. Pavithran, this is a major discrepancy and non-compliance of the provisions.

7. Mr. Pavithran would then submit that there is a clear discrepancy in the evidence of the Raiding Officer and that of the Pancha witness as the only independent witness failed to support the contentions of the Raiding Officer about compliance with Section 50 of the NDPS Act.

8. Mr. Pavithran would submit that there is serious doubt about the exact procedure followed by the Raiding Officer at the spot and more particularly, the weight of the substance as a small piece was taken out of the paper sheet for the purpose of testing and the only Pancha witness is clearly deviating from such material. He would submit that the panchanama would clearly go to show that the weight of the substance was told to the Pancha witness by the Raiding Officer. According to Mr. Pavithran, this would clearly mean that the Pancha did not personally verify the weight of the substance. He would further submit that such a fact is clear from the deposition of the Pancha and the Raiding Officer and further, the CFSL report is totally silent about the weight.

9. Mr. Pavithran would therefore submit that the prosecution has miserably failed to prove the weight of the narcotic substance and thus, it cannot be proved that the Accused was in possession of the commercial quantity.

10. Mr. Pavithran would then submit that the witnesses and more specifically, the Expert who has given the report certifying that the entire paper sheet contains LSD was found intact, which would clearly demonstrate that no test was conducted at the spot by removing the corner piece of the paper sheet.

11. Mr. Pavithran on these lines would submit that if the witnesses are believed, the paper sheet which was forwarded to the CFSL was intact on all sides. Whereas the panchanama shows that a small piece of the paper sheet was removed for testing at the spot, prove that the paper sheet which was allegedly found with the Accused was not the same which was forwarded to the CFSL and thus, it amounts to tampering.

12. Mr. Pavithran would then submit that the Raiding Officer was duty bound to deposit the sealed envelope/packet containing the contraband to the nearest Police station. He submits that the Incharge of the nearest Police Station was therefore required to follow the mandatory provisions of Section 52-A of the NDPS Act, which is clearly absent in the present matter.

13. Mr. Pavithran would then submit that the sealed packet containing alleged contraband was handed over to the Incharge of

the ANC Police Station, Panaji, who failed to follow the procedure under Section 52-A of the NDPS Act and thus, the conviction and sentence awarded by the Courts below stands vitiated.

14. Mr. Pavithran would then submit that there is an inordinate delay in sending the sealed packet/envelope from the office of the Incharge of the ANC Police Station, Panaji to the CFSL which is clear from the record as the envelope was received after seven days. According to Mr. Pavithran, the envelope containing the contraband is required to be despatched within 72 hours and since there is a violation of the above procedure, the possibility of tampering in between cannot be ruled out.

15. Mr. Pavithran would then submit that there is serious doubt with regard to the handing over of the seal used by the Raiding Officer for sealing the envelope and thus, the entire raid performed by the Raiding Officer becomes doubtful. He submits that this also suggests that there was a possibility of tampering with the envelope and finally, the contraband and therefore, according to him, the benefit must go to the Accused.

16. Finally, Mr. Pavithran would submit that there is a breach of Sections 50 and 52-A of the NDPS Act and the evidence brought on record would clearly create serious doubt in the entire raid and

the procedure followed by the Raiding Officer and therefore, the Accused needs to be granted the benefit of it. A written submissions on all above grounds is also filed.

17. Mr. Pavithran placed reliance on the following decisions:

- (i) *State of Punjab Vs. Baldev Singh, (1999) 6 SCC 172;*
- (ii) *Vijaysinh Chandubha Jadeja Vs. State of Gujarat, (2011) 1 SCC 609;*
- (iii) *State of Rajasthan Vs. Parmanand & Another, (2014) 5 SCC 345;*
- (iv) *Union of India Vs. Mohanlal & Another, (2016) 3 SCC 379;*
- (v) *Mohan Lal Vs. State of Punjab, (2018) 17 SCC 627;*
- (vi) *Simarnjit Singh Vs. State of Punjab, 2023 SCC OnLine SC 906 and*
- (vii) *Ranjan Kumar Chadha Vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1262.*

SUBMISSIONS OF RESPONDENTS/STATE:

18. Per contra, Mr. Faldessai would submit that there is strict compliance of Section 50 of the NDPS Act, which has been established through the prosecution witnesses including the independent Pancha witness. He would submit that one or two sentences in the cross-examination cannot be picked to disbelieve the otherwise consistent evidence. He submits that the

panchanama as well as the deposition of the Raiding Officer and the raiding party Members consistently show that the conversation between the Raiding Officer and the Accused was in Hindi. Even the offer under Section 50 of the NDPS Act was given in Hindi, which the Raiding Officer has confirmed in specific words in cross-examination. He would then submit that though the panchanama is written in English as per the normal procedure adopted by the Goa Police, the offer was given to the Accused in the language which he understands and thus, there is full compliance with Section 50 of the NDPS Act.

19. Mr. Faldessai would submit that the contention of the Appellant that there is non-compliance of Section 52-A of the said Act is clearly incorrect. According to Mr. Faldessai, the entire contraband was forwarded to the CFSL through the Scientific Assistant with utmost despatch. There is no evidence about tempering even brought on record during the cross-examination and the evidence of the Scientific Assistant and that of the Expert from the CFSL would fortify it.

20. Mr. Faldessai would submit that the weight of the substance was recorded at the spot itself and that too in the presence of the Pancha and the raiding party Members, who witnessed such

exercise. He would further submit that non-recording of the weight of the substance at the Laboratory would therefore not be detrimental to the case of the prosecution.

21. Mr. Faldessai would submit that a small piece i.e. a piece of approximately a tip of the matchstick was removed for the purpose of testing the contraband at the spot and such piece after testing was thrown on the ground, which is clearly deposed by the Raiding Officer. He submits that the Accused is trying to take advantage of the statement of the Expert that the paper sheet was intact. According to Mr. Faldessai, the question was asked in a different context since the paper sheet contained 30 square-shaped portions and when the Expert says that the paper sheet was intact, it cannot be stretched to such an extent that a small part or portion of it was not torned. He submits that the word “intact” was used in a different context altogether.

22. Mr. Faldessai would submit that the possibility of tampering with the contraband is clearly ruled out since the Expert as well as the Scientific Assistant who are independent from the concerned Police Station supported the case of the prosecution.

23. Mr. Faldessai would submit that the Accused is trying to create confusion with regard to the number of square-shaped

paper sheets and the paper sheet which is actually found to be only one paper sheet containing 30 square-shaped pieces.

24. Mr. Faldessai would submit that the sealed packet containing the contraband was immediately despatched from the ANC Police Station and therefore, the Raiding Officer as well as the Incharge of the Police Station complied with the guidelines referred to by the Accused. It is submitted that as far as compliance with Section 52-A of the NDPS Act is concerned, Mr. Faldessai would submit that since the entire contraband consisting of one paper sheet weighing 0.4 grams was forwarded to the CFSL for testing, there was no need for compliance of Section 52-A of the NDPS Act. Even otherwise, Mr. Faldessai would submit that this aspect has been considered by this Court in another decision in the case of **Roque @ Rocky Fernandes Vs. State & Another** [Criminal Appeal No. 5 of 2023 decided on 14.09.2023], which would be squarely applicable to the facts of the present matter.

25. Mr. Faldessai would submit that the seal used by the Raiding Officer was allotted to the said Officer being the special designated Officer attached to the ANC Police Station, Panaji. The practice which is followed is that after conducting the raid, the seal

used by the Raiding Officer is immediately forwarded to the higher Officer and it remains with the Dy.S.P. till the contraband is forwarded to the CFSL to avoid tampering which has been followed in the present matter.

26. Mr. Faldessai would further submit that the evidence of the raiding party Members including the only Pancha, is consistent on all aspects including the weight of the substance, the description and conducting of the test on the spot. He submits that even if the weight of the substance is not recorded by the Scientific Assistant, the evidence of the Raiding Officer along with the panchanama would confirm that the substance was 0.4 grams. There is no inconsistency, contradiction or omission to that effect in the entire evidence. He specifically argued that there is no denial on the part of the Accused about the weight recorded of the substance during the raid.

27. As contended by Mr. Faldessai, as far as the statement of the Raiding Officer is concerned that he is not fluent in Hindi, would not mean that the Raiding Officer is unable to speak in Hindi.

28. After considering the above submissions as well as on hearing both sides and on perusal of the entire record with the able assistance of both the learned Counsel for the parties, it is

necessary to disclose in a nutshell the case of the prosecution in the chargesheet as well as in the charge.

FACTS AS PER CHARGESHEET:

29. On 18.08.2014 at around 23:00 hours, specific and reliable information was received by PW-8, Sitakant Naik, the PSI attached to the ANC Police Station, Panaji that one male person aged between 40 to 45 years having a strong built, tall height, dark complexion, wearing a blue colour T-shirt and blue colour half pant, having french beard will be coming in red and black colour Honda Dio scooter bearing registration No. GA-03-T-9455 to deliver drugs between 02:00 to 02:30 hours on 19.08.2014, to his prospective customers, near Holy Cross, besides Sacred Heart of Jesus School, Anjuna, Bardez, Goa.

30. The Raiding Officer reduced such information in writing and furnished a copy to the Dy.S.P., Chandrakant Salgaonkar [PW-4]. Thereafter, he arranged two Pancha witnesses and formed a raiding party consisting of a Constable, other Officers and the P.I. and then proceeded to the spot. He carried along with him the drug detection kit, emergency lights, kit box containing weighing, packing and sealing material and the seal having the inscription “Anti-Narcotic Cell, Panaji, Goa 7” with Ashoka Emblem.

31. The raiding party along with the Pancha reached the spot and concealed their presence at a nearby place. At around 02:10 hours, the Raiding Officer saw one person coming on a scooter and on reaching the spot, he parked his scooter and was waiting for someone. The identity of the said person was matching with the information received through the sources. The raiding team surrounded the said person and after introducing himself as the Officer of the ANC, Police Station, Panaji informed the said person about the purpose of the raid. The Raiding Officer thereafter, apprised the said person of his right to search in the presence of the Gazetted Officer or the Magistrate, if he so desires and on receiving the answer in the negative, the Raiding Officer conducted the personal search. During the personal search, the Raiding Officer found in the front right-hand side pocket, one transparent auto press polythene in turn containing one perforated paper sheet. On opening the auto press polythene sheet and on removing the perforated paper sheet, the Raiding Officer found that it contained square shape pieces 30 in number having a symbol of 'OM' in pink colour on each square piece. The Raiding Officer then removed a small piece of one square paper from the perforated sheet and tested it with the field testing kit and found that it contained LSD, a psychotropic substance. The Raiding Officer then weighed the paper sheet containing 30

square-shaped pieces and found it to be weighing 0.4 grams. He then placed the paper sheets containing the LSD in the auto press polythene packed and then in a greenish colour envelope which was then packed, sealed and signed. During the further search, no other incriminating material was found. The envelope containing the perforated paper sheet was marked as Exhibit-1 and the said envelope was attached under the panchanama whereas the seal used for sealing the said envelope was sent from the spot to the Dy.S.P. The said person who was found in possession of the LSD is the Accused who was informed that the said paper sheet contains LSD, which is an offence under the NDPS Act.

32. After the raid was complete, the Raiding Officer along with the raiding team returned to the ANC Police Station, Panaji. The sealed envelope was then handed over to the Incharge of the ANC Police Station, Panaji along with the seizure report and other documents which were then entered in the muddemal register and forwarded to the office of the Scientific Assistant who then forwarded it to the Laboratory for examination. The report of the CFSL confirmed that it was LSD, which is a banned narcotic substance and since it weighs 0.4 grams, it comes within the commercial quantity and is punishable under Section 22(c) of the NDPS Act.

33. The charge was explained to the Accused, upon which, he pleaded not guilty and claimed to be tried. The prosecution in all examined eight witnesses to prove the said charge. The statement of the Accused under Section 313 of Cr.P.C. was then recorded wherein the Accused denied the entire case of the prosecution and finally claimed that he has been falsely implicated.

34. The learned Special Court after considering the entire material on record found that the Accused is guilty of the offence and accordingly, convicted the Accused, which is challenged in the present proceedings.

FINDINGS:

POINT NO. (I):

35. Mr. Pavithran strenuously urged that there is non-compliance with Section 50 of the NDPS Act and thus, the entire raid and recovery stands vitiated. While elaborating on this submission, he invited attention to the deposition of PW-5, PW-6, PW-7 and PW-8 together with the panchanama at Exhibit-35. According to Mr. Pavithran, the only independent witness is the Pancha/PW-6. According to him, the said Pancha though disclosed in examination in chief that the Accused was apprised of his right, the cross-examination clearly shows that such appraisal

was only with regard to the search to be taken in the presence of the Magistrate/Nyayadhish.

36. Mr. Pavithran would submit that the other raiding party Members did not disclose the exact words used by the Raiding Officer in Hindi to apprise the Accused of his right under Section 50 of the NDPS Act. He submits that PW-8, the Raiding Officer for the first time in the cross-examination disclosed the exact words used by him in Hindi, which are not found recorded in the panchanama and therefore, it is clear that no offer was given to the Accused as contemplated under Section 50 of the NDPS Act. In this respect, Mr. Pavithran placed reliance on the decision in the case of **Baldev Singh** (supra), **Vijaysinh Chandubha Jadeja** (supra), **Parmanand** (supra) and a recent decision in the case of **Ranjan Kumar Chadha** (supra).

37. In the case of **Baldev Singh** (supra), the Constitutional Bench while considering the provisions of Section 50 of the NDPS Act observed in paragraph 24 that there is 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 the right to require his search being

conducted in the presence of the Gazetted Officer or the Magistrate and that the failure to so 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. If the concerned person requires, on being so informed by the empowered Officer or otherwise, that his search be conducted in the presence of the Gazetted Officer or the 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.

38. In paragraph 32, the Constitutional Bench though discussed as to whether the provisions of Section 50 are mandatory or directory, did not express any opinion but reminded the purpose for which safeguards have been made and it is held that the provisions of Section 50 of the NDPS Act implicitly make it imperative and obligatory and cast a duty on the Investigating Officer to ensure that search of the concerned person is conducted in the manner prescribed by Section 50, by intimating to the said person about the existence of his right and failure to do so may not vitiate the trial as such, but since it would be considered as inherent prejudice caused to the Accused, it would render his conviction and sentence unsustainable.

39. In the case of **Vijaysinh Chandubha Jadeja** (supra), the Constitutional Bench discussed the provisions of Section 50 of the NDPS Act mainly on the aspect of whether it is mandatory or directory and the mode of giving such information i.e. orally or in writing. It also discussed the issue of compliance with the provisions of Section 50 of the NDPS Act.

40. The question which was referred to the Constitutional Bench is whether Section 50 of the NDPS Act cast a duty on the empowered Officer to “inform” the suspect of his right to search in the presence of the Gazetted Officer or the Magistrate, if he so desires or whether a mere enquiry by the said Officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer can be said to be due compliance with the mandate of the said Section.

41. While considering the above referred question, the Apex Court observed that the mandate of Section 50 is precise and clear, i.e. if the person intended to be searched expresses to the authorised Officer his desire to be taken to the nearest Gazetted Officer or the Magistrate, he cannot be searched till the Gazetted Officer or the Magistrate, directs the authorised Officer to do so.

42. The conclusions drawn in the case of **Baldev Singh** (supra) were discussed in paragraph 23 and thus, it is observed that the case of **Baldev Singh** (supra) did not decide whether Section 50 of the NDPS Act is mandatory or directory, yet it was held that provisions make it imperative for the empowered Officer to inform about the existence of his right and failure to do so, may not vitiate the trial, but would 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 from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Apex Court then considered the insertion of sub-sections (5) and (6) in Section 50 of the NDPS Act and in that regard, it discussed the decision of another Constitutional Bench in the case of **Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539**, wherein it was observed that by insertion of sub-sections (5) and (6) in Section 50, the mandate given in the case of **Baldev Singh** (supra) is diluted, but the Court also opined that, it cannot be said that by the said insertion, the protection or safeguards given to the suspect have been taken away completely.

43. Finally, in paragraph 29, the Constitutional Bench in the case of **Vijaysinh Chandubha Jadeja** (supra) observed thus:

“29. In view of the foregoing discussion, we are of the firm opinion that the object with which 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 in so far 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 a 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.”

44. The above observations would clearly go to show that the provisions of Section 50(1) of the NDPS Act are mandatory in nature and require strict compliance. Failure to comply with it 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.

45. In the case of **Parmanand** (supra), the Apex Court [Division Bench] considered the aspect of compliance under Section 50 of the NDPS Act with regard to the personal search or the search of a bag. In that matter, two suspects were found allegedly possessing the contraband wherein the empowered Officer informed both of them about their right under Section 50 of the NDPS Act. In such circumstances, the Apex Court observed that a joint communication of right available under Section 50(1) of the NDPS Act to the Accused would frustrate the very purport of Section 50. The communication of the said right to the person who is about to be searched is not an empty formality as it has a specific purpose since most of the offences under the NDPS Act carry stringent punishment requiring strict compliance of such rights. These are the minimum safeguards available to the Accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. Each 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 as it may create confusion. The Apex Court further observed that the search of the bag carried by the said person will not attract Section 50(1), however, if the bag carried by

the suspect is searched along with the person, then Section 50(1) of the NDPS Act would be imperative.

46. In the case of **Ranjan Kumar Chadha** (supra), the Apex Court while dealing with the manner in which Section 50(1) of the NDPS Act is required to be complied with, observed that such compliance on the part of the empowered Officer could be by apprising the suspect of his right by intimating him orally, however, the response of the said suspect should be recorded in writing. The Apex Court has proposed in paragraph 65 that henceforth, the response of the suspect to the Officer under Section 50(1) should be recorded in writing. Such observation is clearly perspective in nature and would not be applicable to the matter in hand.

47. As far as Section 50 is concerned, the learned Trial Court has discussed the entire evidence on record and found that there is strict compliance with Section 50(1) of the NDPS Act as the empowered Officer has apprised the Accused about his right to search in the presence of the Magistrate or a Gazetted Officer, upon which, he declined the said offer.

48. On behalf of the Appellant, an attempt has been made to deal with the case of the prosecution by arguing that the Hindi

version uttered by the empowered Officer is not found recorded in the panchanama. Secondly, it is tried to be claimed that since the empowered Officer admitted that he is not well versed in Hindi, there is non-compliance with the mandatory provisions. Thirdly, it has been tried to claim that the only independent witness/ Pancha deviated during cross-examination and referred to the part of the offer and utter of the words “the Magistrate/Nyayadhish” and not the Gazetted Officer.

49. On perusal of the deposition of PW-6 to PW-8 and panchanama of the search and seizure, it would be clear from the examination in chief of the Pancha witness/PW-6 that the Raiding Officer informed the Accused that he has the right to be searched in the presence of the Gazetted Officer or the Magistrate and that he has also a right to search the raiding party Members, which the Accused declined. During cross-examination, PW-6 disclosed that the Raiding Officer informed the Accused in the Hindi language that his search could be taken before a Nyayadhish or the Magistrate. Much stress is applied to the deposition of PW-6 and on his cross-examination to point out that the only independent witness did not support the case of the prosecution regarding compliance with Section 50. However, the entire deposition of the witness is required to be taken into account and only a few

sentences or words cannot be picked or chosen to claim non-compliance. PW-6 in clear terms deposed during the examination in chief that the Accused was apprised of his right that his search could be conducted in the presence of the Gazetted Officer or the Magistrate. He also disclosed that the entire conversation between the Raiding Officer and the Accused was in Hindi. Only because during the cross-examination, he disclosed the words “Nyayadhish and Magistrate”, would not be considered as a dent in his deposition or even contradiction/omission.

50. Admittedly, the panchanama is in English, which is a normal practice followed in Goa. Though the Accused is a person who understands Hindi, it is natural that compliance with Section 50(1) of the said Act is required to be carried out in the language known to the Accused. Thus, informing him about his right in Hindi, would not in any manner be considered as non-compliance, specifically when PW-6 during cross-examination uttered the words “Nyayadhish and Magistrate”. It may sound to be similar, however, during the examination in chief, the same witness has disclosed the words used as a Gazetted Officer or the Magistrate. No contradiction or omission is found recorded in the cross-examination of PW-6. The possibility that as per the understanding of PW-6, the Gazetted Officer in Hindi is called as

Nyayadhish cannot be ruled out. Besides, the deposition of the Raiding Officer/PW-8 is very precise and clear. During his examination in chief, he clearly deposed that the Accused was apprised of his right before conducting the search. During cross-examination, he specifically uttered the Hindi words, which he used to apprise the Accused of his right and at that time, he disclosed to the Accused that he has the right to search in the presence of a Nyayadhish or the Rajpatrit Adhikari [Gazetted Officer]. The other raiding party Members in tandem supported the case of the Raiding Officer with regard to compliance of Section 50 of the NDPS Act.

51. The panchanama is recorded in English and all the witnesses disclosed that the contents of the panchanama were read over to the Accused in the language known to him, however, he refused to sign it. This material would clearly go to show that the Pancha witness along with the Raiding Officer signed the panchanama at the spot. The statement recorded under Section 313 of Cr.P.C. would clearly go to show that all questions are framed in English and the answers of the Accused are recorded in English. The entire statement of the Accused under Section 313 of Cr.P.C. shows that the Accused signed all the pages in English. His answer to the final/last question shows that the raiding party

took Rs.4,800/- from him and did not show it in the chargesheet. The raiding party took his mobile phone, credit card and driving license. He was arrested at a different spot and at that time, he was not having any drugs with him.

52. It is nowhere recorded that the Accused is not conversant with the English language. He did not step into the witness box and also failed to file any written statement to claim his ignorance of the entire raid. First of all, words such as Magistrate or Gazetted Officer are common in other languages too and most of the people are conversant and have knowledge of such Officers/ Authorities. Accordingly, the material which is placed on record would go to show that there is full compliance with Section 50(1) of the NDPS Act before conducting a search of the Accused. The minor discrepancy which is found in the cross-examination of PW-6, cannot wipe out the consistent and cogent evidence of the Raiding Officer and other raiding party Members, which corroborates with the panchanama, which is proved through PW-6. Thus, the contention raised by Mr. Pavithran with regard to non-compliance with Section 50(1) of the NDPS Act is of no substance.

POINT NO. (II):

53. It is the main contention of Mr. Pavithran that there is total non-compliance of Section 52-A of the NDPS Act in the present matter and therefore, the search and the recovery of the contraband stands vitiated. In this respect, he placed reliance on the case of **Mohan Lal** (supra) wherein the Apex Court discussed the provisions of Section 52-A of the NDPS Act and finally, observed that Section 52-A is mandatory and non-compliance of it would suspect the recovery. The Apex Court also discussed about the conflicting provisions and the standing order and observed that such a sample has to be drawn as early as possible and preferably within 72 hours from the time of recovery and the samples should be forwarded to the Laboratory.

54. There is no quarrel with regard to the mandate laid down by the Apex Court in the above decisions with regard to Section 52-A of the NDPS Act. However, the case of **Mohan Lal** (supra) basically deals with the disposal of the drugs and circulation of such drugs which are seized and disposed of or destroyed. The provisions of Section 52-A was inserted only for the purpose of disposal of the drugs seized, by taking samples in the presence of the Magistrate thereby giving evidentiary value to the sample itself. The procedure to be followed for taking samples is also provided therein, however, in the present matter, the contraband

which is seized from the Accused is only one paper sheet containing therein 30 square-shaped portions having a weight of 0.4 grams and containing suspected LSD. The entire contraband was forwarded to the Laboratory for testing. In such circumstances, it has to be kept in mind as to whether non-compliance with Section 52-A would vitiate the recovery or would make it suspect.

55. In the case of **Roque @ Rocky Fernandes** (supra), similar submissions were made wherein this Court observed that when the entire contraband which is found only to be 0.26 grams is forwarded to the laboratory, the question of non-compliance with Section 52-A would be of little importance. It is also observed that the provisions of Section 52-A were inserted by way of the Act of 1989 only with a view to dispose of the seized narcotic drugs and psychotropic substances, which are considered as hazardous in nature, vulnerable to theft, substitution and constraint of proper storage place.

56. However, considering the size of the contraband, in the present matter, i.e. 30 square-shaped pieces on one paper sheet having 0.4 grams of weight, forwarded the entire contraband to the Laboratory, for the purpose of examination, cannot be

considered as non-compliance of Section 52-A of the NDPS Act. It was feasible to forward the entire quantity of 0.4 grams to the Laboratory for the purpose of testing instead of collecting the sample. Thus, to my mind, the contention raised with regard to non-compliance with Section 52-A of the NDPS Act would be of little help to the Accused.

POINT NO. (III):

57. It is the main contention on the part of the Accused that the weight of the contraband is not established and the report of the Laboratory which confirmed the presence of LSD is silent on weight.

58. Mr. Pavithran would submit that the weighing scale used by the Officer did not have any certificate to show that it was properly calibrated, marked and showing the correct weight. He submits that the Pancha witness clearly stated in the panchanama that the weight of the substance was carried out by the Raiding Officer and then he informed him that the weight is 0.4 grams. He would submit that an inference could be drawn that the Pancha did not personally verify or have seen the actual weight of the substances. He would then submit that it was incumbent upon the Expert to carry out the weight since the Laboratory has scientific and

calibrated weighing scales showing even the weight in milligrams. Since the Expert did not carry out the weight and the Pancha is not clear that he has seen the actual weight of the paper sheet there is serious doubt about the weight of the substance. He submits that the sentence depends upon the weight of the substance and in this case, when the weight is not established, the Accused is entitled to such benefit.

59. Mr. Faldessai, learned Additional Public Prosecutor would submit that the deposition of PW-6, Pancha clearly shows that the weight of the substance was carried out in his presence and thus, there is even no denial to this aspect. He would further submit that the panchanama though mentions that the weight is carried out by the Raiding Officer and he then informed the Pancha about the actual weight would not in any manner be construed that the Pancha and the other raiding party Members did not witness the carrying out of the weight and the figures mentioned on the weighing scale. He submits that on each and every document, the weight of the substance is mentioned as 0.4 grams and there is absolutely no confusion about it.

60. PW-6, the Pancha witness in his examination in chief claimed that the weight of the said substance was about 0.4 grams.

This statement of the Pancha nowhere indicated that he did not witness the weighing procedure or the weight disclosed on the weighing scale. There is absolutely no omission or contradiction in the entire deposition of PW-6 with regard to the weight of the substance. The statement found in the panchanama that the Raiding Officer weighed the paper and informed the Pancha that the weight of the paper sheet is 0.4 grams was not put to the witness even to contradict or to record any omission therein. The evidence which is deposed by the witness in the Court has to be taken on its face value. The contents of the panchanama are only for the purpose of contradicting or corroborating. When there is no contradiction or omission recorded with regard to the weight of the contraband in the entire deposition of the Pancha witness and that of the Raiding Officer, the contention on behalf of the Accused regarding the weight of the substance cannot be accepted.

61. The other contention which has been raised is with regard to the seal used by the Raiding Officer for sealing the contraband. The Raiding Officer/PW-8 was attached to the ANC Police Station, Panaji, which is the Police Station having jurisdiction over the entire State of Goa as far as narcotic and psychotropic substances are concerned. It is called as Anti Narcotic Cell, Panaji Police Station. It is a matter of record that the seal has a specific number

and is allotted to the Officer empowered to conduct raids. The practice followed since long is that after sealing the contraband at the spot, the seal used by the Raiding Officer along with the covering letter and impression of the seal is despatched through the messenger and handed over to the Dy.S.P. of the ANC Police Station, Panaji for safe custody. The seal remains in the custody of the Dy.S.P. who maintains a register to that effect. Such seal is returned to the Raiding Officer only after the contraband seized by him is despatched to the Laboratory for examination.

62. In the present matter, the Dy.S.P., who received the seal immediately after the raid, is examined as PW-4 before the Trial Court. He deposed that apart from receiving the information, he received the seal through PSI, Therron D'Costa [PW-5], who was one of the raiding party Members. PW-4 then kept the seal with him and made an entry in the seal movement register, which is produced during deposition.

63. The contention of Mr. Pavithran is that there is no record of handing over the seal to the Raiding Officer prior to conducting the raid is of no substance since practice is followed to hand over the seal only after conducting the raid. In this case, the seal bearing No. 7 was used and the same was handed over to PW-4,

Dy.S.P. immediately after the raid was complete and it remains with him till the contraband was despatched and seized for the purpose of sending it to the CFSL Laboratory. Thus, there is no discrepancy or any illegality with respect to the use of the seal and handing over it to the concerned Authority.

64. The other aspect is with regard to the paper sheet containing 30 square-shaped pieces. It has been tried to point out that at some places, it is recorded that three sheets and 40 square-shaped pieces were recovered and accordingly, there is tampering as alleged. However, on careful perusal of the deposition of various witnesses including PW-1, the Scientific Assistant, there is a consistent stand about recovery of only one paper sheet having 30 square-shaped pieces. There is an apparent and inadvertent mistake in the deposition of PW-1 and more particularly, on pages 3 and 4, however, it is clear that it was only one paper sheet containing 30 square-shaped pieces. The learned Trial Court has also rightly appreciated this aspect and there is no need to disclose it at length since there is absolutely no deviation or inconsistency with this aspect. During trial, the paper sheet was verified as it was found that one corner portion is found torn, corroborating the case of Raiding Officer. This fact is considered by Trial Court in its judgment.

65. Mr. Pavithran would submit that there was delay in sending the sealed envelope to the Laboratory and it was beyond 72 hours and thus, there is clear apprehension of tampering with it. However, the deposition of PW-2, Gauresh Mapari, the Scientific Officer would clearly go to show that he received the forwarding letter along with the notice and sealed envelope on 19.08.2014 at 12:45 p.m. from the P.I., ANC Police Station, which he acknowledged and kept in his custody and thereafter, forwarded it to the Director, CFSL, Hyderabad on 22.08.2014 through a special messenger. The documents to that effect are placed on record.

66. This fact has been corroborated by PW-7, P.I., Suraj Halarnkar, who was the Incharge of the ANC Police Station, Panaji. This witness has deposed that after the raid was over, he received a sealed envelope from the Raiding Officer/PW-8 with a request to keep the same in safe custody after recording the necessary entry in the muddemal register. He forwarded the said sealed envelope on the same day through a special messenger to be handed over to PW-2, Scientific Officer having office at Porvorim. The necessary documents are also placed on record along with the muddemal property register and letter of handing over of the sealed envelope. Thus, the contention that there was a delay in handing over the sealed envelope is of no substance.

67. Mr. Pavithran has placed reliance on the Field Officers' Handbook with regard to the Drug Law Enforcement. However, it is clear that these are the guidelines issued to the Police Officers for the purpose of compliance of relevant provisions. Since in this matter, the sealed envelope was despatched from the ANC Police Station, Panaji on the same day, to be handed over to the Scientific Assistant, which in turn was to be forwarded to the CFSL, Hyderabad, there is substantial compliance of such guidelines.

68. The observations of the learned Trial Court, therefore, cannot be faulted with as the prosecution has successfully proved the guilt on the part of the Accused and that too beyond a reasonable doubt. Accordingly, I answer Points (I), (II) and (III) as observed above.

69. The Appeal therefore fails and stands dismissed.

70. Accordingly, Criminal Miscellaneous Application No. 223 of 2023 (F) stands disposed of.

BHARAT P. DESHPANDE, J.