



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 283/1990

Chunni Lal son of Shri Rizumal, by caste Khatri, resident of Barmer.

-----Appellant

Versus

The State of Rajasthan

-----Respondent

For Appellant(s) : Mr. LD Khatri

For Respondent(s) : Mr. Anees Bhurat, Public Prosecutor

JUSTICE DINESH MEHTA

Judgment

Reportable

02/12/2022

1. The present appeal under section 374 of the Code of Criminal Procedure is directed against the judgment and order dated 29.08.1990, passed by learned Additional Sessions Judge, Barmer in Sessions Case No.51/1989, whereby the appellant was convicted under sections 8 and 18 of Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and has been sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo two and a half years' simple imprisonment.

2. The case as set up by the prosecution was that S.H.O., Barmer- Ghanshyam Singh (PW-7) was asked by the Superintendent of Police, Barmer to conduct search at residence and shop of one Rizumal Khatri, who was reportedly engaged in illicit business of purchase and sale of opium.



3. On receipt of such direction, the S.H.O., Barmer proceeded to conduct search at the business and residential premises of M/s Chunnilal Babulal – a proprietary concern of said Rizumal Khatri.

4. Before the police personnel could reach the shop (M/s Chunnilal Babulal) they saw two persons running from the said shop and trying to flee on finding that the police was approaching.

Those persons were interjected and searched; out of which one was the present appellant (Chunnilal s/o Rizumal Khatri) who was carrying a box/container.

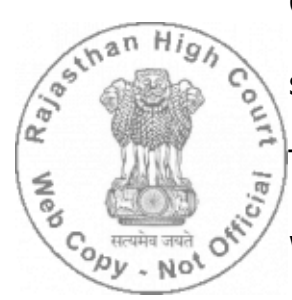
5. According to the prosecution, the appellant was explained about the provisions of section 50 of the NDPS Act and his choice to be searched in presence of a Gazetted Officer or Magistrate. But when the appellant refused to exercise such option, the Seizure Officer himself proceeded to search the appellant so also the box he was carrying. It was revealed that the box which was being carried by the appellant was containing 8.5 kg of substance that was suspected to be opium.

6. May not be relevant, but for the sake of completing the factual narration it may be noted that the other person (Babulal) was also searched and was found having about 570 gms of the same substance with him.

7. 30 gm substance was taken out as sample from the said box and sent for chemical analysis, which was reported/confirmed to be opium.

8. On the charge-sheet being filed, charges under section 8/18 of the NDPS Act were framed against the appellant, who denied the allegation and sought trial.

9. During the course of trial, Jethu Singh (PW-1); Om Prakash (PW-2); Pabaram (PW-3); Goklaram (PW-4); Channaram (PW-5);





Bhanwar Singh (PW-6) and Ghanshyam Singh (PW-7) appeared in witness box as witnesses to prove the case as set up by the prosecution and B.R. Nimbawat (DW-1) appeared for the defence.

10. The following documents were also produced :-

Ex.P/1- Forwarding letter dated 04.07.1989

Ex.P/2- Fard Baramdgi

Ex.P/3- Fard Arrest Chunnilal

Ex.P/4- Statement of Om Prakash under section 161

Ex.P/5- Statement of Pabaram under section 161

Ex.P/6- FSL Receipt

Ex.P/7- Malkhana entry register

Ex.P/8- Certificate

Ex.P/9- Roznamcha Report

Ex.P/10- Roznamcha Report

Ex.P/11- FIR Parcha

Ex.P/12- FSL Report

Ex.P/13- Remand Applciations

Ex.P/14- Report

Ex.D/1- Statement of Gokhlaram under section 161

Ex.D/2- Site plan

Ex.D/3- Statement of Bhanwar Singh under section 161

Ex.D/4- Statement of Roopram under section 161/chargesheet

Ex.D/5- Ration Card Chunnilal

Ex.D/6- Photographs

11. On behalf of the accused-appellant, the defense counsel raised various arguments to establish his innocence and to show that the search was illegal on various counts, including that the Seizure Officer did not follow the mandate and procedure prescribed under sections 40, 42 and 50 of the NDPS Act.





12. The learned trial Court considered the evidence and material available on record and held the appellant guilty of offence under section 8/18 of the NDPS Act and awarded sentence as stated in para No.1 above, while rejecting contentions/grounds raised on behalf of the accused.

13. Mr. Khatri, learned counsel for the appellant navigated the Court through the material, statements and documents on record and submitted that the present appellant had been falsely implicated and wrongly convicted. He argued that no recovery as alleged has ever been made from the appellant's possession and the entire case set up by the prosecution was false.

14. In this regard, he submitted that the motbirs in relation to recovery of the opium, viz. Om Prakash (PW-2) and Pabaram (PW-3) had turned hostile, which is indicative of the fact that the appellant had been falsely implicated in this case. He further argued that since the recovery itself was not proved, appellant's conviction is unsustainable in the eye of law.

15. It was vociferously argued by learned counsel that as per the prosecution's own case, information of existence of contraband substance was at the shop or at the residence of Rizumal (appellant's father) and, therefore, it was required of the Seizure Officer/Prosecution to obtain a warrant for search as mandated under section 42 of the NDPS Act. He added that in absence of a search warrant, it was required of the Seizure Officer to record reasons for not obtaining the same and give information to such effect to the higher officer(s) within a period of 72 hours.

16. In order to bring home this argument, learned counsel took the Court through the record including Roznamcha and statement of Seizure Officer – PW-7, to highlight that there is not even a





whisper about recording of reasons for inability to obtain search warrant, let apart, sending its copy to the higher officers.

17. Having satisfied the Court about absence of recording grounds and its intimation, Mr. Khatri argued that since search and seizure were made in clear contravention of the provisions of section 42 of the NDPS Act, not only the search and seizure but also the consequential conviction of the appellant is vitiated.

18. In support of his contention aforesaid, learned counsel relied upon judgment of this Court rendered in the case of **Jagdish and Anr. Vs. State of Rajasthan** reported in **2011(1) Cr.L.R. (Raj.) 787**.

19. It was argued by Mr. Khatri that appellant's conviction is contrary to law also because compliance of provisions of section 50 of the NDPS Act was not made. It was argued that section 50 of the NDPS Act enjoins upon the Seizure Officer to explain the person being searched about his rights to be searched in presence of a Magistrate or a Gazetted Officer, whereas in the present case, the Seizure Officer has proceeded to search the appellant without apprising him about his right to be searched in presence of Magistrate or Gazetted Officer and as such, the search in question was contrary to provisions of section 50 of the NDPS Act.

20. Learned counsel elaborated that the IO simply told/informed the appellant, instead of explaining that the accused-appellant has a "right" to be searched before a Gazetted Officer or a Magistrate. He relied upon **Ladulal Gurjar vs. State of Rajasthan**, reported in **2020(1) Cr.L.R. (Raj.) 1**, and **Sanjeev and Anr. Vs. State of Himachal Pradesh (Criminal Appeal No. 870/2016 before the Apex Court)** to substantiate that it is now a settled proposition that provisions of section 50 need to be complied with





strictly and exactly; merely substantial compliance is not sufficient.

21. Relying upon **S.K. Raju @ Abdul Haque @ Jagga Vs. State of West Bengal** reported in **(2018) 9 SCC 708**, learned counsel for the appellant further submitted that as per the recent interpretation of Hon'ble the Supreme Court, provisions of section 50 are also applicable in cases where both the person as well as belongings of the person are searched, even if the recovery is made solely from the belongings of the person.

22. Learned counsel argued that both the legal arguments which went to the root of the matter have been brushed aside by the trial Court in a cursory manner and the order impugned thus, deserves to be quashed and set aside.

23. It was also argued by Mr. Khatri that the prosecution has simply showed that the sample of 30 grams of the substance recovered was packed in a plastic polythene bag and then, in a tin metallic box and sealed. But the fact that the seal and packaging remained intact has not been proved beyond doubt.

24. He contended that no specimen seal was prepared on the spot and when the sample was analyzed by the Forensic Science Laboratory its quantity was found to be 28 grams, hence, the possibility of the sample being tampered with cannot be ruled out. He thus argued that the appellant - accused has been wrongly framed and convicted.

25. Learned counsel relied on the judgment of **Rusi vs. State of Rajasthan** reported in **1996 Cr.L.R. (Raj.) 1985** to assert that lack of preparation of seal memo on the spot raises doubt as to the FSL report and is sufficient ground to acquit the accused.





26. Per contra, Mr. Anees Bhurat, learned Public Prosecutor, submitted that the arguments advanced by the appellant's counsel are too technical to be accepted. He argued that the recovery of contraband substance from the appellant's possession has been aptly proved and the appellant has not been able to find any fault in the evidence adduced and produced by the prosecution; hence, his conviction deserves to be upheld.

27. In relation to the appellant's arguments about provisions of section 42 of the NDPS Act, learned Public Prosecutor contended that recovery of the contraband substance was made while the appellant was trying a get away – on public road and not in the shop or house, hence, provisions of section 42 of the NDPS Act are not attracted.

28. He further argued that the contraband substance (8.5 kgs of opium) was recovered from the box being carried by the appellant and not from his person, as such provisions of section 50 of the NDPS Act were also not applicable.

29. In support of his contention aforesaid, learned Public Prosecutor cited the following judgments rendered by Hon'ble the Supreme Court:

i. Jeet Ram vs. The Narcotics Control Bureau, Chandigarh, reported in AIR 2020 SC 4313;

ii. Dayalu Kashyap Vs. State of Chhattisgarh, Criminal Appeal No. 130/2022, SLP No. 514/2021, decided on 25.01.2022 and;

iii. Kallu Khan Vs. State of Rajasthan, Criminal Appeal No. 1605/2021, decided on 11.12.2021.

30. Notwithstanding his stand that provisions of section 50 are not attracted, learned Public Prosecutor took an alternative plea that the same stood complied with. He took the Court through the testimony of the Seizure Officer (PW-7) and while underscoring



the relevant part of the statement, he argued that the accused was explained about his rights provided under Section 50 of the NDPS Act and therefore, the appellant's contention in this regard is liable to be rejected.

31. Heard learned counsel for the parties and perused the material available on record.

32. On perusal of the testimony of the prosecution witnesses and material available on record, this Court is of the view that the prosecution has established its case that 8.5 kg of contraband substance (opium) was recovered from the conscious possession of the appellant. The fact that Motbirs have turned hostile hardly has a bearing on the prosecution's case. The stand of the Motbirs – Om Prakash and Pabaram that the recovery was not made in their presence, can be ignored, given the fact that they have admitted their signatures on the 'fard recovery'.

33. That apart, the Seizure Officer and the Investigating Officer and other prosecution witnesses have proved beyond a pale of doubt that the recovery was made from possession of the appellant and the appellant has not been able to unsettle the evidence/stand of the prosecution.

34. This Court is not much convinced with the arguments of Mr. Khatri that the prosecution had not prepared the specimen of the seal, and that the reduction of quantity (from 30 grams to 28 grams) when it reached the laboratory for chemical analysis suggests tampering of the sample.

35. This Court is firmly of the view that such trivial discrepancies cannot demolish the well-established prosecution case, in which the recovery of the substance from the accused has been proved





and further, because the substance recovered has been found to be a contraband substance.

36. The judgment of **Rusi (supra)** relied upon by the appellant is clearly distinguishable on facts, as in that case, neither the FIR, nor the report, nor even the seizure memo showed that any seal impression was prepared, which is not so in the case at hand.

37. Adverting to the argument of learned Public Prosecutor that since the recovery of the substance was made from the box/container being carried by the appellant, the provisions of section 50 of the NDPS Act were not attracted, the same is not tenable. Such argument was backed by the judgments of the Apex Court in the case of **Kallu Khan (supra)** and **Jeet Ram (supra)**. But the facts in those cases are clearly distinguishable. In the case of **Kallu Khan**, the bag that was searched and seized was lying aside on a motorcycle and in the case of **Jeet Ram**, the gunny bag containing charas was recovered from under the counter of the dhaba where the accused was having meals.

38. In the case in hands, the box was being held very much in appellant's hands. That apart, the appellant himself and his clothes were searched and in addition thereto, the box he was carrying was also searched. Hence, it was incumbent upon the officer to follow the provisions of section 50 of the Act.

39. This issue in almost similar fact-situation has been duly settled by Hon'ble the Supreme Court in the case of **S.K. Raju (supra)** in the following words:

"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 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."

40. Moving on to the judgment in the case of **Dayalu Kashyap (supra)** relied upon by the learned Public Prosecutor, suffice it to observe that the same also does not apply to this case as in the peculiar facts of that case, the search of the person and the search of the polythene bag being carried in a Kanwad were held to be distinct from each other.

41. Then comes the question, as to whether the procedure adopted by the Seizure Officer can be said to be a proper compliance of the provisions of section 50 of the NDPS Act. This Court, on the appraisal of the factual matrix, is of the view that the requisite compliance was made. As per the provisions of section 50 of the NDPS Act and its interpretation given by various judicial pronouncements, it is obligatory upon the Seizure Officer to make a person known about his right to be searched in presence of Magistrate or Gazetted Officer.





42. The relevant part of section 50 reads thus:

"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."

43. It is to be noted that 'fard baramdgi' Ex.P/2 records that when the appellant was asked as to whether he wants the search to be conducted in presence of Magistrate or Gazetted Officer, he refused to get such right exercised. It will not be out of place to reproduce relevant extract of Ex.P/2 - recovery memo.

"एक व्यक्ति हाथ में लोहे के पीपे की पेट्टी लेकर भागा तो उसका पिछा कर कोने चुन्नी लाल के मकान के कोने पर पकड़ा जिसको उसका नाम पूछा तो उसने अपना नाम चुन्नी लाल s/o रिझूमल खत्री निवासी राय कोलोनी बाड़मेर बताया जिस पर चुन्नी लाल को अपनी व पिपे की तलासी देने बाबत कहा कि वह अपनी व पिपे की किसी मजिस्ट्रेट या राजपत्रित अधिकारी के सामने देना चाहे तो दे सकता है जिस पर चुन्नीलाल ने तलासी देने से इन्कार किया।"

44. As per section 50 of the NDPS Act, what is expected of a Seizure Officer is, to take such person to the nearest Gazetted Officer or Magistrate, etc., if he so requires. The language of the provision, its import and purport has given rise to many judicial debates and judgments with diverse opinions, until a reference answered by a Constitution Bench of Hon'ble the Supreme Court in the case of **Vijaysinh Chandubha Jadeja vs. State of Gujarat** reported in **(2011) 1 SCC 609** has settled the law authoritatively in the following words:

"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.**

.....

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 (supra) and Prabha Shankar Dubey (supra) 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's case (supra). **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."**

45. A perusal of the recovery memo shows that it records that the appellant was given the option to be searched in the presence of a Magistrate or a Gazetted Officer. Not only this, PW-7 – Ghanshyam Singh, the Seizure Officer has deposed in his statement that the appellant was 'counseled' about his right to be searched in the presence of a Magistrate or a Gazetted Officer. It will not be out of place to reproduce relevant extract of the statement:

"उसके बाद उसे रूबरू मजिस्ट्रेट के या राजपत्रित अधिकारी के समक्ष अपनी व अपने साज-सामान की तलाशी लिवाये जाने की **समझाइश** की लेकिन उसने दोनों ही बातों से इंकार किया।"





46. The expression "समझाइश" encapsulates something more than the expression "समझाना". Its synonym / nearest translation in English can be – "counselling". The ambit of the term counselling is wider than the word "explaining" simpliciter. समझाइश or counselling goes to the extent of impressing upon the accused to get himself searched in the presence of a Magistrate or a Gazetted Officer.

47. In the case of **Ladulal Gurjar (supra)**, the police personnel instructed the accused to accompany them to a Gazetted Officer or Magistrate for the purpose of being searched unlike the present case, where the accused was informed of the choice available to him. Similarly, in the case of **Sanjeev (supra)**, the arrest memos did not reflect that the accused persons were informed or given a choice before their personal search was conducted. Therefore, both the judgments relied upon by the accused-appellant do not favour him as they are distinguishable on facts.

48. That apart, the search in question was made in the year 1989, when the law was still in the making on this issue. Courts have taken divergent view on the scope and requirement under section 50 and the same has been settled as late as in 2011. Hence, even if the officer concerned was wanting on some aspects, the search cannot be set at naught. For the reasons stated afore, in the opinion of this Court, what has been recorded in Ex. P/2, is necessary compliance of section 50 of the NDPS Act, as envisaged by the law at the time.

49. Next comes the core question involved in the present case - whether the provisions of section 42 were to be followed in the extant facts and if yes, what would be the effect of non-compliance of the provisions of section 42 of the NDPS Act.





50. Section 42 of the NDPS Act is being reproduced hereunder for ready reference :-

"42. Power of Entry, search, seizure and arrest without warrant or authorisation. -

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act;





Provided that in respect of holder of a license for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

51. It is an admitted case of the prosecution that the Seizure Officer received a direction from the Superintendent of Police, Barmer to proceed for search as there was an information that contraband substance was lying in shop/residence of Mr. Rizumal. It was only in furtherance of such direction that the Seizure Officer had proceeded to the shop of Rizumal – (M/s. Chunnilal Babulal) for the purpose of conducting search.

52. Before the police could enter the shop, the appellant is said to have run off from the shop, at which point of time he was stopped, intercepted and searched. Though, as per prosecution's story, the recovery of contraband substance was made on the road and not from the shop or residence, but the fact remains that the Seizure Officer had essentially set off for conducting search at the shop/residence of said Rizumal.

53. It was only a fortuitous circumstance that the appellant had left the shop/residence and was intercepted while he was managing an escape from the shop. It is the proposal to conduct





search which requires a warrant or in other words, the warrant is a must before one conducts a search at a shop or the residence of a person.

54. It was obligatory upon the Seizure Officer/S.H.O concerned to have obtained a warrant as required under section 42 of the NDPS Act and section 94 of the Code of Criminal Procedure. If the S.H.O. was of the view that obtaining a search warrant would provide a window to the accused to conceal the substance or evidence, he was required to record grounds for such belief. As a matter of fact, he was not only required to record grounds for the belief, but also required to send copy of such grounds to the higher officers within 72 hours.

55. If the argument of the learned Public Prosecutor is accepted that since the recovery was made not from the shop or residence but on the way, the provisions of section 42 of the NDPS Act were not attracted, then, it will frustrate the whole purpose of the provisions of section 42 of the NDPS Act. Admittedly, the Seizure Officer had proceeded to conduct search at the business premises and residence of said Rizumal. It was only a matter of chance that the appellant – accused realized that the police was approaching and hence, ran away with the substance which was lying in the shop, only to be caught outside the shop.

56. According to this Court, the provisions of section 42 of the NDPS Act have been enacted in order to avoid arbitrary and unwarranted searches; eliminate fictitious recoveries and to ward off unnecessary harassment to the citizens. In the instant case, neither the grounds for proceeding without a search warrant have been recorded nor has any intimation of such reason to the higher officers been given. Hence, the search was fundamentally void.





57. If the interpretation which is being given in the case in hand is not given, then, it would be very convenient for the police personnel to flout the mandate of section 42 of the NDPS Act and stage manage or portray a recovery just outside the shop to claim immunity from the rigours/mandate of section 42 of the NDPS Act.

58. An action which was otherwise illegal or without authority of law cannot be validated or held legit in hindsight, merely because the seizure was ultimately made on the road and not in the shop or residence. Non-compliance of the mandatory provisions encapsulated in section 42 of the NDPS Act is writ large in the instant case.

59. My above view is fortified by the judgment of **Jagdish** (supra), where, in similar circumstances, the prosecution failed to adduce any evidence as to the compliance of the provisions of Sec 42(2) and thus, the Court observed as follows:

"18. The requirement of Section 42 of the Act is not merely a technical one. In fact, Section 42 of the Act requires a substantial compliance or its mandatory provisions. Since NDPS Act is almost a draconian law, a large number of safety precautions have been prescribed by the Act itself. The first and foremost precaution is that the moment the police receives an information from an informant, it is legally bound to inform the higher, authorities. This requirement is laid down in order to check the excess of the police, and to ensure that the police does not falsely implicate a citizen. This requirement also places a burden on the higher authorities to supervise the functioning of the subordinate officers. Hence, this requirement is both in the interest of the accused, and in the interest of the efficiency of the Police Department.

... ..

... ..

21. It is true that both in the case or Dalel Singh (Supra) and in case of Kamal Singh (Supra), the Apex Court had observed that in case there is substantial compliance of Section 42 of the Act, then the trial is not vitiated. However, in both these cases, the Apex Court had pointed out that the information to the superior officers can be transmitted





through wireless only if the raiding party was on petrol. In case the information is received at the Police Station, then it is imperative to write down the information and to transmit the same to the superior officers. In the case of Beckodan Abdul Rahiman v. State of Kerala 2002 Cri. L.J. 2529: RLW 2002 (4) SC 560 the Hon'ble Supreme Court had observed that safeguards provided in provisions of Section 42 and in Section 50 of the Act are mandatory in nature. Therefore, their compliance is essential."



60. In the present set of facts, since the action of proceeding for search sans a search warrant itself was illegal, not only the corresponding recovery but also the conviction is vitiated.

61. As an upshot of the discussion foregoing, this Court has no hesitation in concluding that there was a conscious and clear breach of the provisions contained in section 42 of the NDPS Act, for which the appellant's conviction is liable to be quashed and set aside.

62. The appeal, therefore, succeeds. The appellant's conviction so also the impugned judgment and order dated 29.08.1990, passed by learned Additional Sessions Judge, Barmer is hereby quashed and set aside.

63. The appellant is on bail; his bail bonds furnished pursuant to the order dated 14.12.1990, passed by this Court stand cancelled.

64. The record of the case be sent back forthwith, if not required in any other case.

(DINESH MEHTA),J

3-akansha/Arun/-