

Dharambir vs.state

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Court : Delhi

Decided On : Nov-13-2018

Appellant : Dharambir

Respondent : State

Advocate for Def. : Mr. G.M. Farooqui

Advocate for Pet/Ap. : Mr. S.B. Dandapani

Judgement :

\$~R-10 *IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

1. t September, 2018 Pronounced on :

13. h November, 2018 % + 1. CRL.A. 658/2017 DHARAMBIR STATE
Appellant Through : Mr. S.B. Dandapani, Adv. versus Respondent Through :
Mr. G.M. Farooqui, APP for the State CORAM: HON'BLE MR. JUSTICE C. HARI
SHANKAR

JUDGMENT

The appellant Dharambir stands convicted, vide judgment dated 21st March, 2017, passed by the learned Special Judge (NDPS), Dwarka, of having committed the offence punishable under Section 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act), as he was found to have been in possession of 30 kilos of opium. Vide separate order, dated 21st

March, 2017, the appellant was sentenced to undergo rigorous imprisonment of 15 years with fine of 1.5 lakhs, with default sentence of two years simple imprisonment.

2. The appellant is in Appeal, before this Court, against the said judgment and order. Crl.A.658/2017 Page 1 of 20 Case of the prosecution 3. According to the prosecution, secret information was received, at about 8:15 p.m. on 6th February, 2012, that a person named Dharambir, resident of Mansa Ram Park, Uttam Nagar, would be coming alongwith his son, in a Maruti Zen car, No.DL8F2191 below the metro station, Dwarka mor, between 10 p.m. and 11 p.m., and would be carrying opium with him. The said secret information was recorded by SI Satyawar (PW-4) and forwarded to Inspector Kuldeep Singh (PW-10) who further forwarded the information to ACP Beer Singh and directed SI Satyawar to conduct raid. Accordingly, a raiding team, comprising Ct. Surender Kumar (PW-2), Ct. Jai Prakash (PW-3), Ct. Satya Pal (not arrayed as a witness) and himself, was organised by SI Satyawar. The raiding team reached metro station, Dwarka mor at about 10 p.m. Public persons were asked to join the proceedings, but they refused to do so.

4. At about 10:20 p.m., a person came to the spot in a Maruti Zen car No.DL8F2191 He was identified by the secret informer, as Dharambir, i.e. the present appellant. The appellant alighted from the car and waited for about 10 minutes. When he was about to leave, he was apprehended by the raiding team. He was apprised, by the raiding team, of his right to be searched before a Gazetted Officer or a Magistrate, and a notice under Section 50 of the NDPS Act (Ex. PW- 3/A) was also served on him. However, it is contended that the Crl.A.658/2017 Page 2 of 20 appellant declined the said right, whereupon SI Satyawar conducted search of the appellant as well as the vehicle. Though nothing incriminating was recovered from the appellant, two containers, closed with lids were recovered from the rear seat of the Maruti car. On opening these containers, they were found to have a sticky black coloured substance, kept in a polythene bag. Testing of the said substance, using the Field Testing kit carried by the raiding team, disclosed the substance to be opium. On weighment, the two polythene bags weighed 14 kgs and 16 kgs respectively. Two samples, of 50 gms

each, were taken from the polythene bags, and kept in separate parcels, marked A1, A2 and B1, B2. The remaining opium was retained in the respective containers, which were marked with marks A and B respectively. FSL form was filled, and the parcels were sealed by SI Satyawan.

5. Rukka was prepared and, on the basis thereof, FIR2912, under Sections 18 and 25 of the NDPS Act, was registered at PS Crime Branch.

6. The seized case property was sent to the SHO Inspector C.R. Meena (PW-9), who deposited the same in the malkhana after affixing his seal thereon.

7. Investigation of the case was, thereafter, entrusted to SI Bheem Singh (PW-11), site plan was prepared and statement of witnesses CrI.A.658/2017 Page 3 of 20 recorded. The seized samples were sent to FSL for chemical examination, which revealed the substance to be opium.

8. On 29th September, 2012, charges, under Sections 18 and 25 of the NDPS Act were framed against the appellant, who pleaded not guilty and claimed trial. Evidence 9. The prosecution examined 12 witnesses, of which the following alone are relevant.

10. PW-4 SI Satyawan and PW-10 Inspector Kuldeep Singh deposed regarding receipt of initial information and preparations for the search. PW-4 SI Satyawan proved the copy of DD No.38, recorded by him, regarding the receipt of secret information as Ex. PW-4/A, and DD No.39, recorded by him regarding the departure of the raiding team from the office of the narcotics cell as Ex. PW-4/B. PW-10 Inspector Kuldeep Singh deposed regarding the production, before him, of the secret information by PW-4 SI Satyawan, conveying, the secret information, to the ACP and directing SI Satyawan to conduct the raid. He also proved DD No.38, recorded by SI Satyawan, as Ex. PW-5/A. CrI.A.658/2017 Page 4 of 20 11. The prosecution witnesses who deposed regarding the actual search and seizure were PW-2 Ct. Sandeep Kumar, PW-3 Ct. Jai Prakash, PW-4 SI Satyawan and PW-5 Ct. Om Prakash.

12. PW-2 Ct. Sandeep Kumar deposed that, on 6th February, 2012, when the raiding team intercepted the Maruti Zen car bearing No.DL8F2191 one person, who was identified by the secret informer as the appellant Dharambir, deboarded from the driving seat of the car. He, correctly identified the appellant in the court during trial. PW-2 further deposed that Dharambir waited outside his car for about 10 minutes and, when he was attempting to re-enter his car, he was apprehended by the raiding team. He further testified that the appellant was served with a formal notice under Section 50 of the NDPS Act (Ex. PW-3/A) to which the appellant responded, declining to exercise his legal right to have the search conducted in the presence of a Magistrate or a Gazetted Officer. He, therefore, allowed the raiding team to search his person as well as his vehicle.

13. PW-2 further deposed that, after unsuccessfully attempting to involve public persons in the proceedings, PW-4 SI Satyawar conducted search of the appellant as well as the vehicle. The search of the vehicle yielded two white coloured containers, found lying on the rear seat both of which closed with lids. On opening the said lids, the containers were found to have contained transparent polythene tied with a thread having sticky black coloured substance. On opening the polythene and testing the black coloured substance, using a Field CrI.A.658/2017 Page 5 of 20 Testing kit carried by the raiding team, the substance tested positive for opium. The polythene, on weighing was found to weigh 14 kgs and 16 kgs respectively. Two samples, of 50 gms each, were drawn from the substance contained in both the polythenes and transferred to small polythene packets labelled A1, A2 and B1, B2. Thereafter, the large polythene packets were sealed and marked A and B. All the six resulting pullandahs, mark A1, A2, B1, B2, A and B were sealed by PW-4 SI Satyawar and taken into possession with a seizure memo Ex. PW-3/D.

14. PW-2 thereafter deposed that all the six sealed pullandahs, with the seal, FSL form and carbon copy of the seizure memo were given to him. He proceeded to PS Crime Branch, Malviya Nagar and produced all the said pullandahs with the FSL form and carbon copy of seizure memo before Inspector C.R. Meena (PW-9). The rukka was presented before the duty officer, and FIR was registered. He thereafter returned to the Narcotics Cell and handed over the copy of the FIR and

the rukka to SI Bheem Singh.

15. The sealed samples were shown to PW-2 and correctly identified, by him, in court during trial.

16. Nothing substantial resulted from the cross examination of PW-2. Crl.A.658/2017 Page 6 of 20 Rival submissions 17. Mr. S.B. Dandapani, learned counsel appearing for the appellant, has raised only three submissions.

18. Mr. Dandapani first relies on para 12 of the recent judgment of the Supreme Court in Mohinder Singh v. State of Punjab, 2018 SCC Online SC973 which reads thus : 12. For proving the offence under the NDPS Act, it is necessary for the prosecution to establish that the quantity of the contraband goods allegedly seized from the possession of the accused and the best evidence would be the court records as to the production of the contraband before the Magistrate and deposit of the same before the Malkhana or the document showing destruction of the contraband. Mr. Dandapani would seek to point out that, in the present case, repeated opportunities were granted to the prosecution, to produce, before the learned Special Judge, the case property, which would include the entire quantity of opium allegedly recovered from the appellant. However, the prosecution failed to do so. As such, Mr. Dandapani would submit, the actual quantity of opium recovered from the appellant could not be said to have been conclusively determined, and the finding, that the appellant was in possession of 30 kilos - or, for that matter, of commercial quantity - of opium, could not be sustained on facts or in law.

19. Mr. Dandapani next relies on the fact that, while the case of the prosecution, was that the appellant had been intercepted at Dwarka Crl.A.658/2017 Page 7 of 20 Mor, and found in possession of opium, the appellant had, in his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr PC) deposed, per contra, that he had been lifted from Bahadurgarh at 8:15 p.m. on 6th February, 2012. As such, Mr. Dandapani would submit, it was word of accused against word of prosecution, and there was no justification for the learned Special Judge to prefer the latter over the former.

20. The third submission, of Mr. Dandapani, relies on the decisions of the Supreme Court in *Dilip v. State of Madhya Pradesh*, (2007) 1 SCC450 *State of Rajasthan v. Parmanand*, AIR 2014 SC1384 and *Arif Khan @ Agha Khan v. State of Uttarakhand*, 2018 SCC OnLine SC459 *Dilip* (supra) and *Parmanand* (supra). Mr. Dandapani would point out, mandatory compliance with Section 50 of the Act, where the person of the accused is searched alongwith his baggage, or the vehicle in which the accused was travelling. Irrespective of whether the contraband narcotics were recovered from the person of the accused, or from his baggage, or the vehicle, non-compliance of Section 50 of the Act, Mr. Dandapani would submit, vitiates the search and all consequent proceedings. In juxtaposition with this submission, Mr. Dandapani would placed reliance on *Arif Khan* (supra), which mandates compliance with Section 50, even in a case where the accused denies the facility of search by a Gazetted Officer or in the presence of a Magistrate. The said decision, therefore, holds the consent, or lack of consent, on the part of the accused, to be irrelevant, and mandates compliance with Section 50 in every case CrI.A.658/2017 Page 8 of 20 where the provision is attracted. In the present case, Mr. Dandapani would point out, the search had been conducted of the appellant as well as the Maruti car in which he was travelling. *Dilip* (supra) and *Parmanand* (supra), therefore, required compliance with Section 50 of the Act, by effecting the search in the presence of a Magistrate or a Gazetted Officer. The only reason cited, by the prosecution, for non- compliance with the statutory provision, is refusal, on the part of the appellant, of the offer to have himself searched before a Magistrate or by a Gazetted Officer. Such refusal was not sufficient to conduct the search in violation of Section 50 of the Act and, consequently, Mr. Dandapani would submit that the proceedings stand vitiated ab initio.

21. Mr. Farooqui, learned APP, arguing per contra, submits as follows: (i) Though para 12 of the judgment in *Mohinder Singh* (supra), undoubtedly holds that the best evidence, of the quantity of the contraband goods seized from the accused, would be production of the said goods before the Magistrate and deposit thereof in the malkhana, or the documents showing destruction of the contraband, the absence of such best evidence would not be, by itself, sufficient to question the quantity of goods seized, where collateral evidence, of the said quantity, is

available, as in the present case. (ii) As regards the discrepancy between the place of interception, search and seizure, as alleged by the prosecution, Crl.A.658/2017 Page 9 of 20 and as contained in the statement of the appellant, recorded under Section 313 of the Cr PC, Mr. Farooqui draws my attention to para 6.2 of the impugned judgment, which notes that the appellant himself had given contradictory statements regarding the place of his interception, stating, in his cross examination, that he had been lifted from his house, situated in Uttam Nagar, and, in his statement under Section 313, that he had been picked up by the police officials, alongwith his car from Bahadurgarh. As such, Mr. Farooqui would submit, the statement of the appellant could not inspire confidence. He would also urge that there was no reason for the police officials, who had no enmity with the appellant, to level any false allegations against him. (iii) Regarding Dilip (supra), State of Rajasthan (supra) and Arif Khan (supra), Mr. Farooqui, however does not have any ready answer, apart from stating that the search of the appellant and the Maruti car, and the seizure of opium from the said car, had taken place in accordance with the law as it stood at that time and that, therefore, the officials could not be alleged to have acted illegally. Analysis 22. As, in my view, the appeal is liable to be allowed even on the basis of the judgement of the Supreme Court in Dilip (supra), Crl.A.658/2017 Page 10 of 20 Parmanand (supra) and Arif Khan (supra), it is not necessary to enter into any other controversy.

23. Section 50 of the NDPS Act reads as under: 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 take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate. requires, (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). Crl.A.658/2017 Page 11 of 20 (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. 24. The statutory parameters, within which Section 50 (1) of the NDPS Act peregrinates, have been authoritatively expanded in the aforementioned three decisions, on which Mr. Dandapani relies, i.e. Dilip (supra), Parmanand (supra) and Arif Khan (supra). It would be advantageous to note the law, as enunciated in these decisions, especially as they would impact several, if not all of the appeals presently pending under the said enactment.

25. Dilip (supra) 25.1 In this case, opium, concealed in a scooter, was seized from the persons who were riding the scooter. The said persons were arrested, but acquitted, later, by the learned Sessions Judge, on the ground that the mandatory statutory requirement of Section 50 of the NDPS Act had not been complied with. This decision was reversed by the High Court, resulting in the matter travelling to the Supreme Court. 25.2 The Supreme Court observed, at the very outset, in para 6 of the report, that it was now well settled that the offence committed under the Act is a grave one and that, therefore, procedural safeguards provided therefor in terms of Section 41, 42 and 50 of the NDPS Act should be complied with. It was observed that, before seizure of the Crl.A.658/2017 Page 12 of 20 contraband from the scooter, personal search of the appellants had been carried out and that, admittedly, at the time, the provisions of Section 50 of the NDPS Act had not been complied with. Para 16 of the judgement went on to hold, thus: 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 person of the appellants was also searched, it was obligatory on the part of PW10 to comply with the said provisions. It was not done. (Emphasis supplied) 25.3 Reliance was placed, by the Supreme Court, on its earlier decision, rendered by a

Constitution Bench in *State of Punjab v. Baldev Singh*, (1999) 6 SCC172 which held that, where the provisions of Section 50, inter alia, were attracted, compliance therewith was mandatory.

26. Parmanand (supra) 26.1 Parmanand (supra) followed Dilip (supra). 26.2 Here, opium was recovered from the bag of the respondents, which was also searched along with the search of his person. Before conducting the search, the respondents were informed that they had a right to get themselves searched in the presence of the Magistrate or a Gazetted Officer, as required by Section 50(1) of the NDPS Act. A written notice, to the said effect, was also given to the respondents. Crl.A.658/2017 Page 13 of 20 Both respondents gave consent, in writing, for their search to be carried out by the raiding team. Thereafter, on the search of the said persons, and the bag carried by them, being conducted, opium was found concealed in the bag. 26.3 Before the Supreme Court, the respondents pleaded infraction of Section 50 of the NDPS Act. The plea was opposed by the appellant-State, which contended that the respondents had been communicated their right, under Section 50(1), by way of a written notice, and that the search had been conducted, by the raiding team, only after written consent, from them, had been obtained therefor. 26.4 The Supreme Court found, on facts, that, while the 2nd respondent, before it, had consented, in writing, to being searched by the raiding team, the 1st respondent, i.e. Parmanand, had not appended his signature to the said consent, and had not given any independent consent either. The submission that Parmanand had consented to being searched by the raiding team was, therefore, found to be incorrect. 26.5 The Supreme Court, thereafter, took note of the judgment of the Constitution bench in *Baldev Singh* (supra). 26.6 It was found, on facts, that the conviction of the respondents was based solely on recovery of opium from the bag of Parmanand, and that no opium was found on his person. Taking stock of the earlier Crl.A.658/2017 Page 14 of 20 judicial authorities regarding Section 50, the Supreme Court enunciated the law, in para 15 of the report, in crystal-clear terms, thus: 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. (Emphasis supplied) 26.7 Observing that the opium had been recovered from the bag of Parmanand, who had not consented to waive his right under Section 50(1) of the Act, and that the search of Parmanand and the bag took place simultaneously, the Supreme Court, holding that Section 50 of the NDPS Act, which was required to be complied with, had been infringed, dismissed the appeal of the State and upheld the acquittal of the respondents before it.

27. Arif Khan (supra) 27.1 In this case, charas was recovered from the person of the appellant. Prior thereto, his consent, in writing, for being searched by the raiding party, instead of a Magistrate or a Gazetted Officer, was obtained, under Section 50 of the NDPS Act. CrI.A.658/2017 Page 15 of 20 27.2 Before the Supreme Court, violation of Section 50 was pleaded, on behalf of the appellant, who contended that the search/recovery of the alleged contraband from the appellant ought to have been made only in the presence of a Magistrate or a Gazetted Officer. 27.3 The State, per contra, pleaded that, as the written consent, of the appellant, had been obtained, for having his search conducted by the raiding party, no violation of Section 50 could be said to have occurred. 27.4 The Supreme Court did not agree with the contention of the State. The law, as encapsulated in the said judgment, is contained in paragraphs 18 to 30 thereof, which read thus: the appellant (accused) of 18. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned judgment acquit the appellant from the charges in question.

19. The short question which arises for consideration in the appeal is whether the search/recovery made by the police officials from the alleged contraband (charas) can be held to be in accordance with the procedure prescribed under Section 50 of the NDPS Act.

20. for consideration in this appeal is whether the prosecution was able to prove that the procedure prescribed under Section 50 of the NDPS Act was followed by the Police Officials in letter and spirit while making the search and recovery of the contraband Charas from the appellant (accused). In other words, the question that arises Crl.A.658/2017 Page 16 of 20 taking the aforementioned questions after 21. What is the true scope and object of Section 50 of the NDPS Act, what are the duties, obligation and the powers conferred on the authorities under Section 50 and whether the compliance of requirements of Section 50 are mandatory or directory, remains no more *res integra* and are now settled by the two decisions of the Constitution Bench of this Court in *State of Punjab v. Baldev Singh*, (1999) 6 SCC172 and *Vijaysinh Chandubha Jadeja* (*supra*).

22. Indeed, the latter Constitution Bench decision rendered in the case of *Vijaysinh Chandubha Jadeja* (*supra*) has settled into considerations all previous case law on the subject.

23. Their Lordships have held in *Vijaysinh Chandubha Jadeja* (*supra*) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted Officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. 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 but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also *Ashok Kumar Sharma v. State* SCC67 and *Narcotics Control Bureau v. Sukh Dev Raj Sodhi*, (2011) 6 SCC392

24. Keeping in view the aforementioned principle of law laid down by this Court, we have to examine the question arising in this case as to whether the prosecution followed the mandatory procedure prescribed under Section 50 of the NDPS Act while making search and recovery of the contraband Charas from the appellant

and, if so, whether it was done in the presence of a Magistrate or a Gazetted Officer so as to make the search and recovery of contraband Charas from the requirements of Section 50. In our considered view, the evidence adduced by the prosecution neither suggested and nor proved that the search and the recovery was made from the appellant in the presence of either a Magistrate or a Gazetted Officer.

26. It is the case of the prosecution and which found acceptance by the two Courts below that since the appellant (accused) was apprised of his right to be searched in the presence of either a Magistrate or a Gazetted Officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the appellant (accused) gave his consent in writing to be searched by the police officials (raiding party), the two Courts below came to a conclusion that the requirements of Section 50 stood fully complied with and hence the appellant was liable to be convicted for the offence punishable under the NDPS Act.

27. 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 of *Vijaysinh Chandubha Jadeja (supra)*. This we say for the following reasons.

28. 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; 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; 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; Fourth, in order to make the search and in the case *Crl.A.658/2017* Page 18 of 20 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.

29. 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.

30. 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. 28. The law laid down in the above-extracted passages from Arif Khan (supra), needless to say, binds this Court under Article 141 of the Constitution of India, inter alia for the reason that the Supreme Court has chosen to rely on the earlier decision, of its own Constitution Bench, in *Vijaysinh Chandubha Jadeja v. State of Gujarat*, (2007) 1 SCC433 29. It is undisputed, in the present case, that the search of the appellant, and his car, were conducted by the raiding party, and not by the Magistrate or a Gazetted Officer. Neither were the appellant and his car produced before any Magistrate or Gazetted Officer. The plea, of the respondent, that, as the appellant had been apprised of his right CrI.A.658/2017 Page 19 of 20 to have himself, and his car, searched by the Magistrate or a Gazetted Officer, and he had himself agreed to be searched by the raiding party, the mandate of Section 50 stood fulfilled, though attractive, cannot sustain, as an identical plea, raised in similar facts, stands negated in Arif Khan (supra). Conclusion 30. For non-compliance with the provision of Section 50 of the NDPS Act, therefore, the search and seizure of the appellant, and the car in which he was travelling, and the alleged recovery of opium, therefrom, as well as all the proceedings consequent thereupon, stand vitiated in toto. The appellant would, therefore, be entitled to be acquitted of the charges against him, and the impugned judgment, dated 21st March, 2017, as well

as order on sentence dated 27th March, 2017, are therefore required to be quashed and set aside.

31. It is ordered accordingly.

32. Resultantly, the Appeal is allowed. The appellant shall be released forthwith, unless required to be detained for any other reason. C. HARI SHANKAR,
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