

Varadapureddi Simmanna Vs. State

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Court : Andhra Pradesh

Decided On : Feb-19-1999

Reported in : 1999(2)ALD352; 1999(1)ALD(Cri)504; 1999(1)ALT(Cri)518; 1999CriLJ2465

Judge : Vaman Rao, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20, 41, 42(1), 43, 49 and 50

Appeal No. : Crl. A. No. 917 of 1993

Appellant : Varadapureddi Simmanna

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar, Adv.

Judgement :

1. This appeal is directed against the judgment dated 25-8-1993 in CC No.3 of 1993 on the file of the Additional Sessions Judge-cum-Special Judge, Vizianagaram under which the appellant (A3) along with other accused (A1 and A2) have been convicted for the offence under Section 8(c) read with Section 20(b)(i) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short

'the Act') and sentenced to undergo rigorous imprisonment for a term of five years.

2. The facts relating to this appeal may be stated briefly as follows :

On 16-11-1992 at about 8.00 p.m., PW1 V. Ramaswami, Excise-Snb-Inspector, S. Kola and PW2, M.V.S.S.N. Murthy-Excise Inspector and some others were conducting the route watch, during the course of which, they reached Matcdu tank at about 10.30 p.m. There they noticed a Maruthi Van bearing No. OIU 6362 coming from S. Kola and on suspicion they stopped the said van, PW1 went near the van and opened the door by the side of the driver (Accused No. 1, A2 and A3 were sitting by the side of the Accused No.1. He observed paper packets smelling ganja on the back seat. Then the Officers sent one of the members of the search party to S.Kola to secure mediators. He returned at 11.45 p.m. stating that none were available to come forward and act as mediators as it was night and got opened the side doors of the van and found 10 packets of ganja each weighing 8 kilo grams and 12 packets each weighing 4 kilo grams of ganja in the back seat. When the dicky of the said van was opened, they found 17 packets of ganja each weighing 8 kilo grams and samples were taken out of these packets and the accused were arrested. They prepared Special Report, Ex.P3, which was attested by PWs.1 and 2 and others. PW2 arrested A1 to A3. They seized the van (MO1) and the ganja packets MOs.2 to 40 found in that van. They went to the Excise Station at S. Kota at about 1.45 a.m. on 17-11-1992. On the basis of the Special Report, Ex.P3, PW1 registered a case in Crime No.1/92-93 under Section 20(b)(i) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) and issued FIR Ex.P4. PW1 also sent the copies of Exs.P3 and P4 to his superiors. According to the analyst's report, the sample contained ganja. Thus, the case of the prosecution is that the accused were in possession of 'ganja' at the relevant time.

3. On behalf of the prosecution, PWs. 1 and 2 have been examined, Exs.P1 to P5 and MOs.1 to 79 have been marked. On behalf of the accused, DW1 has been examined as solitary defence witness.

4. On this evidence, the learned Additional Sessions Judge found all the accused guilty including the appellant herein (A3) and convicted and sentenced as stated above.

5. Now, the point for consideration is whether the prosecution has proved the guilt of the appellant beyond reasonable doubt, and whether the judgment under appeal can be sustained?

6. The learned senior Counsel for the appellant Sri. C. Padmanabha Reddy assails the judgment of the trial Court on the ground that as there was no compliance with Section 50 of the Act in conducting the search, the whole search is vitiated and the accused is entitled to acquittal as held by the Supreme Court in the case of State of Punjab v. Balbir Singh, : 1994 CriLJ3702 , and Mohinder Kumar v. State, Panaji, : 1995 CriLJ2074 . Admittedly, in this case, there is no compliance with the requirement of Section 50 of the Act. Section 50 of the Act, for ready reference, is extracted hereunder:

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 provisions of Section 41, Section 42, or Section 43 he shall if such If these observations are read in the context of facts of that case, it would be apparent that it may not be stated as a matter of law that Section 50 of the Act would come into play only when search or seizure is effected on the basis of prior information. From the above quoted observations it is clear that if a Police Officer without any prior information person so requires, 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.

(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 any one excepting a female.

7. It is contended by the learned Public Prosecutor that the provisions of Section 50 of the Act would be applicable where the search or seizure has been conducted

on the basis of prior information and that the said provision does not apply where search or seizure is effected suddenly during the course of routine duties of the officers concerned. The judgment of the Supreme Court in *State of Punjab v. Balbir Singh* (supra) is relied upon for this proposition. The observations made in para 26 of the judgment are extracted below :

'26. The questions considered above arise frequently before the trial Courts. Therefore, we find it necessary to set out our conclusions which are as follows :

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

(2A) and (2B) :

(2C) Under Section 42(1) the empowered Officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent, these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3), (4), (5) and (6):

If these observations are read in the context of facts of that case, it would be apparent that it may not be stated as a matter of law that Section 50 of the Act would come into play only when search or seizure is effected on the basis of prior information. From the above quoted observations it is clear that if a Police Officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Criminal Procedure Code and when such search is completed. Obviously Section 50 of the NDPS Act would not be attracted. But, another significant observation is that if during such search or arrest, there is a chance of recovery of any narcotic drug or psychotropic substance then the Police Officer should thereafter proceed in accordance with the provisions of the NDPS Act. Even if he happens to be an empowered officer from that stage onwards he should carry out the investigation in accordance with the other provisions of the Act. Thus, the criterion for applicability or non-applicability of Section 50 of the Act is not necessarily whether the search or seizure was made on the basis of prior information or not, but the real test appears to be whether the Officer who was about to effect search or seizure under Sections 41, 42 or 43 of the NDPS Act had a chance to comply with the provisions of Section 50 of the NDPS Act. What was emphasised in the above cited judgment of the Supreme Court was that if during the normal course of investigation, an Officer encounters an accused and without any contemplation to proceed under the NDPS Act during that encounter, search of the person is completed, then the question of compliance of Section 50 of the Act would not arise. The observations of the Supreme Court extracted above would show that emphasis was laid not only on the search being without prior information but also on the fact that when during the normal course of investigation, without any contemplation that the search would result in discovery of an offence under NDPS Act such search is already completed by the time such discovery is made, Section 50 of the NDPS Act would not be attracted. This aspect is clear in the subsequent three Judge-

Bench judgment of the Supreme Court in the case of Mohinder Kumar (supra).8. In Mohinder Kumar's case (supra), the facts are that the ASI who was on patrolling duty accidentally i.e., without prior information, reached the house and alighted from the vehicle, he noticed two persons sitting in the verandah of the house, as soon as they saw the Officer and the police party they hurriedly entered into the house and on suspicion the Sub-Inspector of Police and the police party went into the house and directed the two accused to stay where they were and asked the Head Constable and others to arrange for panchas and on the arrival of panchas, he entered into the house, questioned the accused persons and found one white plastic bag containing two polythene bags containing charas. On the basis of these facts, it was held that the provisions of Section 50 of the Act were applicable and its non-compliance along with the provisions of Section 42 of the Act, both being mandatory, the accused were entitled to acquittal. In that case the search was not on the basis of any prior information. Thus, it would appear from the cited judgments of the Supreme Court that search of seizure only on the basis of prior information, is not a condition for applicability of the provisions of Section 50 of the NDPS Act. It was observed in the Mohinder Kumar's case (supra) that from the stage the ASI has reason to believe that the accused persons were in custody of narcotic drugs and sent for panchas, he was under obligation to proceed further in the matter in accordance with the provisions of the Act. Thus, it was held that his failure to comply with Section 42(1) of the Act, viz., failure to record grounds of his belief inasmuch as the search was conducted between sunset and sunrise and failure to comply with the requirement of Section 50 of the Act inasmuch as the accused was not informed and questioned about his choice to be searched before a Gazetted Officer or Magistrate vitiated the search.

9. At this stage, it is necessary to underline the crucial facts relating to search and seizure in the case on hand. According to the evidence brought in by PW1 himself, PW2 and others were conducting the 'route watch', during the course of which they reached a place called Maledu tank at about 8.00 p.m. They noticed a Maruti van coming from S. Kota and stopped the said van, PW1 went near the van and opened the door by the side of driver (accused No.1). A2 and A3 were sitting by the side of accused No. 1 and the excise officials observed some paper packets smelling like ganja on the back-side of the car. It was then as stated by PW1 that

they sent one of the members of the raiding party to fetch mediators. By 11.45 p.m., he returned stating that no mediators were available. Further, it is in the evidence of PW1 in the examination-in-chief itself that they noticed one white Maruti van coming from S. Kota and that on suspicion they stopped the van. Thus, the circumstances in this case disclose that PWs.1 and 2 stopped the van because of suspicion that they might contain narcotic drugs or psychotropic substances and that before actual search and seizure, by a casual look through the window of the car, they observed certain paper packets which smelt like 'ganja'. Thus, at this stage they decided to search the person and the vehicle of the accused and that is why they sent for fetching the mediators. It was only after a lapse of considerable time at about 11.45 p.m. when no mediators could be secured, they took up the search of the accused and the van during which they seized ganja from inside the car and also in the dicky of the car.

10. In the background of these facts, it is obvious that after they stopped the car and observed certain paper packets suspected to contain ganja, they decided to undertake the search, it was at that moment of time, that they could be said to have been 'about to search' the person and the vehicle as contemplated under Section 50 of the Act. Under the circumstances, even though the search was not a result of prior information, can it be said that when PWs.1 and 2 were 'about to search' the accused and the van as contemplated in Section 50 of the Act, they had not opportunity or there was no possibility of complying with the requirements of the said provisions.

11. In the Oxford English Reference Dictionary (Edited by Judy Pearsall and Bill Trumble, Oxford New York, Oxford University Press, 1995), the meaning of the phrase 'be about to' has been given as 'be on the point of (doing something)'. Black's Law Dictionary (6th Edition) has given the meaning of the phrase 'about to sail' as 'just ready to sail'. To give effect to the words 'is about to search' found in Section 50 of the NDPS Act, the requirements would appear to be that when any officer duly authorised under Section 42 of the NDPS Act is on the point of searching or is at a point of time when it could be said that he is just ready to search any person, it is at that point of time that he shall comply with the requirement of Section 50 of the NDPS Act and shall inform the person to be

searched that he has option to be searched in the presence of a Gazetted Officer or a Magistrate and if the person exercises his option to be so searched before a Gazetted Officer or a Magistrate, the Searching Officer shall take him to such Gazetted Officer or Magistrate for the purpose of search. Thus, the provision of Section 50 of the NDPS Act would come into play at a point of time which could be a brief pause or interval between the mental decision of the Officer to search under the provisions of the NDPS Act and the actual search. This pause or interval may be a few seconds or few minutes or more depending on the circumstances of a particular case. It is possible to contemplate a case where before actual search, the Searching Officer might not have entertained any idea about searching under NDPS Act. For example, where without prior information during the course of routine investigation into some other offence search was conducted and only after the search was completed, it came to light that the offence involved was or it included one under NDPS Act, the question of compliance with Section 50 of the Act does not arise. It is also possible to envisage a case where the ultimate search and seizure could be an integral part of the transaction which was completed in a rapid succession without passing through a moment of time at which the Officer conducting search could be said to have been 'about to search'. For instance, where a Police Officer proceeds towards a man and seeing the police man, the man runs, the Police Officer chases him and apprehends him and seizes the bag in his hands and opens it and finds a contraband article under the NDPS Act, in such a case, the circumstances may be such that the Officer conducting search may not go through the process of making a conscious decision to search and go through a point of time when he paused and was at a stage of being 'about to search'. It is in such cases, that it could be said that Section 50 of the NDPS Act cannot be invoked and that it is not possible to comply with the provisions of Section 50 of the NDPS Act. In such cases, the question of infringement of Section 50 of the NDPS Act may not arise.

12. In this case, the very fact that PWs. 1 and 2 on the basis of suspicion that the van contained Narcotic drugs sent for mediators and waited for a considerable time before actually undertaking the search, would show that the moment they sent for mediators, they had made a conscious decision to search and from that moment onwards they could be said to be 'about to search' the accused. The very

fact that they waited for a considerable time for arrival of mediators before actually undertaking the search would show that had the officers, PWs.I and 2 really wanted to comply with Section 50 of the NDPS Act, they had ample opportunity to do so. The moment they believed or suspected that the packets found in the car contained ganja and decided to search the accused and the vehicle, it must be held that they were about to search the accused and the vehicle. Thus, in this case there was no reason why they could not have complied with the requirements of Section 50 of the NDPS Act by questioning the accused whether they wanted to be searched before a Gazetted Officer or a Magistrate and if they so chose, by taking the accused to such Gazetted Officer or Magistrate. It is clear from the evidence of PWs.I and 2 in this case that they never thought of complying with Section 50 of the NDPS Act even though it was not impossible to comply in the facts and circumstances of the case narrated above if otherwise Section 50 was attracted. But in this case Section 50 of NDPS Act is not attracted for a different reason.

13. It would appear that in this case there is no evidence to show that the person of the accused or their immediate baggages were searched. The evidence discloses that they searched the car in which the accused were travelling. Thus, it is not a case of search of the person but is of search of vehicle.

14. The question is whether the provisions of Section 50 of the Act could be invoked in respect of 'search of a vehicle'. It is contended by the learned Public Prosecutor that the provisions of Section 50 of the NDPS Act apply to search of persons and not to search of vehicle or premises. A reading of Section 50 would disclose that its language is very clear that it applies to search of 'any person'. On the other hand, reading of Section 49 of the NDPS Act would make it clear that it makes a provision for search of any animal or conveyance which is or is about to be used for transport of any narcotic drug or psychotropic substances in respect of which it is suspected, that any provision of this Act has been or is about to be contravened. Section 49 of the NDPS Act reads as follows :

49. Power to stop and search conveyance:--

Any Officer authorised under Section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and -

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or conveyance;

(c) If it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

15. Section 43 of the NDPS Act makes a provision for arrest of any person in a public place where the Officer suspects any commission of offence under the Act. Section 43(a) of the NDPS Act authorises any officer empowered under Section 42 of the Act to seize in any public place or in transit any narcotic drug or psychotropic substance in respect of which there is a reason to believe that an offence punishable under Chapter IV has been committed. It also authorises seizure of any animal or conveyance or article liable for confiscation under the Act.

16. Thus, Section 49 of the NDPS Act provides for search of any conveyance like a motor car. Section 43 of the Act authorises seizure of such conveyance in any public place under the circumstances contemplated in the respective sections.

17. In support of his contention that the provisions of Section 50 of the Act cannot be invoked in respect of search of a vehicle, the learned Public Prosecutor relies on the judgment of the Supreme Court in *Namdi Francis Nwazor v. Union of India and another*, 1996 (4) Scale (SP) 1. The learned Counsel appearing for the accused on the other hand relies on the judgment of the Supreme Court in *Mohinder Kumar's case* (supra).

18. The facts in the case of *Mohinder Kumar* disclose that the person of the accused was searched besides a bag lying by the side of the accused. At the instance of the accused, further recovery was effected from the adjoining room

where a shoulder bag was found containing charas. Thus, this is a case in which along with search of the person, search of premises was also undertaken. In the conclusions reached, it was held that Section 50 of the NDPS Act was applicable but no specific dictum has been laid down or observation made indicating that the provisions of Section 50 of the Act are applicable to search of premises also.

19. On the other hand, the facts in Namdi Francis Nwazor's case (supra) reveal that it was not a case of search of a person but that of search of a bag which the accused had already checked in as a luggage and was lodged in the aircraft by which the accused was supposed to travel. The bag was recalled from the aircraft to the customs counter area for examination and on search of such bag, it was found that one carton contained polythene packets containing brown coloured powder which was suspected to be heroin. On an analysis of provision of Section 50 of the Act, the Supreme Court held that Section 50 of the NDPS Act applies to a case of search of person but not to search of any article. It was however clarified that if a person was carrying a hand bag or like and if the incriminating article was found therein, it could still 'be search of a person' of the accused requiring compliance of Section 50 of the NDPS Act. With reference to the facts of that particular case, it was held that inasmuch as the bag was lying elsewhere (lodged in the cargo compartment of aircraft) and not with the accused and was brought to the place where the accused was found and on search it contained contraband material, it was not a case of search of person of the accused or search of bag in his immediate possession and therefore does not attract the requirement of Section 50 of the Act for the reason that the incriminating article was not found on the accused person. It may be seen that in the case of Namdi Francis Nwazor case (supra), the Supreme Court specifically dealt with the question of applicability of Section 50 of the Act to search of a bag not found on the person of the accused as the bag was brought from the aircraft. On the other hand, in Mohindar Kumar's case (supra), there is no specific observation by way of laying down a principle that the provisions of Section 50 of the Act are applicable to search of a vehicle or premises or to any other search apart from the search of the person of the accused. In fact, a reading of the judgment in Namdi Francis Nwazor case (supra) would show that during the course of arguments some previous Supreme Court judgments were sought to be brought to the notice of the Court to point out that in

some of those decisions, the provisions of Section 50 of the Act were held applicable where incriminating articles were found from almirah or other places within the room where the accused was found. The Supreme Court rejected that contention by observing that those cases were dealt with on their own facts and reiterated that where the bag containing incriminating article though belonging to the accused was out of his reach, after it was checked in and was nowhere near the place where he was apprehended and searched, the question of invoking the provisions of Section 50 of the Act did not arise.

20. The learned Counsel for the accused invited the attention of this Court to a judgment of Punjab and Haryana High Court in the case of Harbans Singh v. State of Haryana, 1997(1) All India CrL. L. Reporter 349, in which it was held that Section 50 of the NDPS Act would be applicable to a search of a vehicle also. In the case of K.C. Jaya Kumar v. State, 1996 (2) ALD (CrL.) 455, a single-Judge of this Court (Justice K.B. Siddappa) following the Supreme Court Decision has held that the provisions of Section 50 of the NDPS Act cannot be invoked in respect of search of a vehicle. A Full Bench of Bombay High Court in the case of Ebanezer Adebaya v. B.S. Rawat, 1996 CrL.LJ 3210, has also held that Section 50 of the NDPS Act would not be attracted to search of conveyance or a house even if the accused is physically present at the time of search. It was also held that personal search does not include the search of bags or luggage which are presumed to be in possession of a person even if such baggage lies in a house or railway compartment or at the airport. I am in respectfully agreement with the view of my learned Brother Justice K.B. Siddappa, in the case of K.C. Jaya Kumar (supra). In view of these authorities, it has to be held that the provisions of Section 50 of the NDPS Act cannot be invoked in respect of search of a vehicle or premises. Whether in certain circumstances search of a vehicle forms part of the same transaction as the search of the person, who is searched while he was in the vehicle, and whether under such circumstances search of person includes search of vehicle is a question which does not fall for consideration in this case inasmuch as the evidence does not disclose in this case that the person of the accused was searched and on the other hand the contraband was merely seized from the vehicle. However in this case the search must be held to have been vitiated because of infringement of Section 42(1) of the Act.

21. The facts in this case shows that the van was encountered by the Officers at about 10.30 p.m. which itself was aftersunset and actual search took place at about 11.45 p.m. Thus, the search in this case took place between sunset and sunrise. Section 42 of (he NDPS Act is extracted for ready reference which applies to this case :

'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 department of Central Excise, Narcotics, Customs, Revenue, Intelligence or any other department of the Central Government or of the Border Security Force 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 personal knowledge or information given by any person and taken down in writing, that any narcotic drug or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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 anydocument or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; 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 Chapter IV relating to such drug or substance :

Provided 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 subsection (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.'

The facts referred to above make it obvious that proviso to Section 42(1) of the NDPS Act is attracted. I have carefully read the evidence of PWs. 1 and 2 who are the only witnesses examined in this case. Their evidence does not disclose that the Officer conducting search has recorded his reasons for believing that a search warrant or authorisation could not be obtained without affording opportunity for concealment of evidence or facility for the escape of the offender. There is nothing in the evidence of PWs. 1 and 2 to show that they had addressed themselves to the requirement of proviso to Section 42(1) of the NDPS Act to record reasons before undertaking search between sunset and sunrise. No such grounds have been placed on record. Therefore, it is a clear case of violation of proviso to Section 42(1) of the NDPS Act. As held by the Supreme Court in Balbir Singh's case (supra), in para 26(2C) provisions of Section 42 of the NDPS Act including the proviso to the section are mandatory and contravention of the same would affect the prosecution and vitiate the trial. Thus, in this case, the trial must be held to have been vitiated in view of contravention of proviso to Section 42(1) of the NDPS Act and the appellant is entitled to acquittal.

22. In the result, the appeal is allowed and the conviction and sentence awarded to the appellant by the trial Court are set aside. The bail bonds of the appellant shall stand discharged.

23. Though this appeal has been filed by only one of the accused (A3) but as the conviction of the other accused i.e., A1 and A2 is based on the same facts, the conviction of the other two accused also must be deemed to have been set aside in view of the Division Bench judgment of this Court in the case of Durga Mahesh and another v. State of Andhra Pradesh, 1996 (3) ALD 167, and they shall be set at liberty forthwith if they are in jail and not required in any other case.

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