

**Lissy Vs. State of Kerala, Represented by Public Prosecutor**

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**Court :** Kerala

**Decided On :** Jan-23-2012

**Judge :** V.K. Mohanan

**Appeal No. :** C.R.A. No. 1770 of 2011

**Appellant :** Lissy

**Respondent :** State of Kerala, Represented by Public Prosecutor

**Judgement :**

1. The appellant, a lady, who is the sole accused in S.C.No.529 of 2010 of the court of Additional Sessions Judge (ADHOC-II), Ernakulam is challenging the conviction and sentence imposed on her under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the N.D.P.S.Act') in the above sessions case, vide judgment dated 4.10.2011.

2. The case of the prosecution is that the accused had kept in her possession 234 ampules of Buprenorphine (Lupigesic), 29 ampules of Diazepam and 27 ampules of Phenergan for the purpose of sale, without any licence at about 6.p.m. on 24.7.2010 in a public road, situated on the northern side of Kaloor International Stadium compound, Ernakulam and thus, committed the offence punishable under Section 22(c) of the N.D.P.S.Act. Consequently, Crime No.1326/2010 of Palarivattom Police Station was registered for the above offence and on completing the investigation, a report was filed before the trial court based upon

which S.C.No.529 of 2010 is instituted and when the accused was produced, after hearing the prosecution as well as the defence, a formal charge was framed against her under Section 22(c) of the NDPS Act and when the said charge was read over and explained to the accused, she denied the same and pleaded not guilty. Consequently, the prosecution adduced its evidence consisting of the testimony of PWs.1 to 6 and Exts.P1 to P15. From the side of the defence, besides examining DWs.1 and 2, Exts.D1 to D3 were also marked. Mos.1 to 10 were also identified and marked as material objects. After considering the entire evidence and materials on record, the trial court found that the accused had kept in her possession commercial quantity of psychotropic substances without any licence and thereby committed the offence punishable under Section 22(c) of the N.D.P.S.Act and accordingly, she was found guilty and convicted thereunder. On such conviction, the trial court sentenced the appellant to undergo rigorous imprisonment for ten years and to pay fine of Rupees One Lakh, with a default sentence of rigorous imprisonment for one year. Set off is allowed. The above findings, order of conviction and sentence of the trial Court are challenged in this appeal.

3. In order to prove the above case, the prosecution mainly depends upon the evidence of PW.1, the then S.I. Of Police, Palarivattom Police Station, who detected the crime. When PW1 was examined, he had deposed that on 24.7.2010, he was working as S.I. of Police, Palarivattom Police Station to the effect that one lady is conducting the sale of psychotropic substance near the Stadium at Kaloor and he reduced the said information into writing in the General Diary of the Police Station, and thereafter, he reported the above facts to his superior Officer viz., C.I. of Police. Ext.P1 is the report so given by PW1 to his superior Officer. PW1 has further deposed that thereafter, he proceeded and reached at the place of occurrence along with the police party at about 5.20 p.m. and he had seen one lady, who was standing near the shop, Kaghas Travels housed in a building situated in front of the stadium. PW1 also deposed that he had gathered her address from her and he had convinced her about her right in getting her body searched in the presence of the Magistrate or a Gazetted Officer, and on conveying such right, the said lady demanded the presence of the Gazetted Officer and therefore, PW1 ensured the presence of the Excise Enforcement

Circle Inspector of Narcotic Cell, who reached the spot by 5.55 p.m. According to PW1, the Gazetted Officer has conducted the search of the persons of the Police personnel including PW1 and no contraband article was seized during such search. According to PW1, the bag, which was in the hands of the accused, was got examined by C.Ws.6 and 7, the woman Police Constables in the presence of the above mentioned Gazetted Officer and himself. MO1 is the said vanity bag. PW1 deposed that on such examination, plastic cover was seen, which is marked as MO2 and the said plastic cover contained the psychotropic substances. According to PW1, the woman Police Constables, on instruction and at the instance of PW1, had taken samples from the contraband articles found in the possession of the accused. The samples are marked as S1 to S6 and the remaining items are marked as Exts.P1 to P3. According to PW1, he had sealed and labelled the samples as well as the residue after drawing the sample. During the examination of PW1, the residue of Lupegesic ampules are identified and marked as MO4 series and Diazepam ampules are marked as MO5 series. PW1 has further deposed that the entire proceedings were recorded in a mahazar prepared by himself and Ext.P4 is the said mahazar. According to PW1, the mobile phone and a sum of Rs.5400/- in cash have been seized from the MO1 bag of the accused. Ext.P6 is marked through PW1, which is the specimen impression of seal, marked in this case. According to PW1, on completing the seizure and after the arrest of the accused, he returned to the Police Station and thereafter, he registered a crime as Crime No.1326/2010 of the Palarivattom Police Station for the offence punishable under Section 22(c) of the N.D.P.S.Act. Ext.P7 is the F.I.R. prepared by him. According to PW1, on completing the seizure and after the arrest of the accused, he returned to the Police Station and thereafter, he registered a crime as Crime No.1326/2010 of the Palarivattom Police Station for the offence punishable under Section 22(c) of the N.D.P.S.Act. Ext.P7 is the F.I.R. prepared by him. According to PW1, he produced the material objects before the court with a forwarding note to send the samples to the chemical analyst. According to PW1, he had made a report to his superior Officer regarding the seizure of the contraband article as well as the arrest of the accused and the said report is marked as Ext.P10.

4. PW2 is another independent witness cited and examined by the prosecution to prove the seizure of the contraband articles from the accused. When examined, PW2 had deposed in favour of the prosecution, about the seizure of the contraband articles from the accused. According to PW2, he had put his signature on Ext.P4 mahazar and he had also identified the materials objects.

5. PW3 is a witness, who is an attester to Ext.P12 scene mahazar. During the investigation, Ext.P13 site plan was got prepared through PW4, the Village Officer and when PW4 was examined, Ext.P13 was marked through him. PW5 is the Excise Enforcement Circle Inspector, Ernakulam, who was brought to the place of occurrence, on the basis of the demand of the accused when the right of the accused under Section 50 of the NDPS Act was conveyed to her. When PW5 was examined, he had deposed that he had witnessed the search of the person of the accused and affixed his signature in the document. During the examination of PW5, he had also identified the material objects. PW6 was then working as the C.I. of Police of the North Police Station, Ernakulam, on the date of the incident in the present case. When he was examined, he had deposed about the endorsement that the made in Exts.P1 and P10 prepared and forwarded by PW1. According to PW6, he conducted the and prepared Ext.P12 scene mahazar and got prepared Ext.P13 site plan. According to PW6, during the investigation, he had questioned the witnesses and recorded their statement and he had also obtained the custody of the accused, conducted investigation, and eventually laid the charge, on completing the investigation. It is the above evidence and materials, which are relied on by the learned Judge of the trial Court, in support of his finding and convicting the appellant/accused, which finding and conviction are under challenge in his appeal.

6. Sri. Mathai Varkey Muthirenthi, learned counsel appearing for the appellant vehemently submitted that as per the admitted case of the prosecution, it was PW1, who got the information a contemplated under Section 42(1) of the NDPS Act, and who proceeded to the place of occurrence, but it is the admitted case of the prosecution that MO1 vanity bag of the appellant was examined and searched by CWs.6 and 7 who are only woman Police Constables and they are not authorized under Section 42(1) of the NDPS Act for such search, search and

arrest. Therefore, according to the learned counsel, as per the admitted case of the prosecution, they have violated the mandatory provisions contained in Section 42(1) of the NDPS Act and therefore, in the light of the decision of the Apex Court reported in Dilip and another v. State of M.P. [2007 KHC 3022], the appellant is entitled to get a clear acquittal.

7. In support of the fervent plea for an acquittal, the learned counsel, on the strength of the decision of the Apex Court reported in State of Punjab v. Baldev Singh [1999 KHC 707; 1999(6) SCC 172], has submitted that if the evidence relating to the search and arrest of the accused, as the same are done by CWs.6 and 7, who are incompetent under Section 42(1) of the NDPS Act, is excluded, absolutely there is no legal evidence to connect and convict the appellant and therefore, the trial court is absolutely incorrect and illegal in convicting the appellant.

8. On the other hand, Smt. Hyma, the learned Public Prosecutor, on the strength of the decision of the Apex Court reported in P.P.Fathima v. State of Kerala [(2003) 8 SCC 726], submitted that the search and seizure conducted by CWs.6 and 7 were in the presence and as instructed by PW1, who is an empowered Officer under Section 42(1) of the NDPS Act and therefore, there is no legal bar in accepting the evidence connected with the search, seizure and arrest involved in the case and therefore, according to the learned counsel, there is no scope for interference with the conviction and sentence.

9. I have carefully considered the arguments advanced by the learned counsel for the appellant as well as the learned Public Prosecutor. I have perused the judgment of the trial court and scrutinized the evidence and materials on record.

10. In the light of the rival contentions advanced by the counsel for the appellant as well as the learned Public Prosecutor and in the light of the evidence and materials referred to above, the question to be considered is whether the trial court is justified in its finding that the accused had kept in her possession the commercial quantity of psychotropic substance without any licence and thereby committed the offence punishable under Section 22(c) of the NDPS Act and whether the said finding is supported by any legal evidence.

11. The specific case of the prosecution is that on getting information, PW1, who is admittedly an empowered officer under Section 42(1) of the NDPS Act, after taking down the same, proceeded to the spot and the contraband articles were seized and the appellant/accused was arrested at his instance and as directed by him. In the light of the specific contention advanced by the learned counsel for the appellant and the counter argument advanced by the learned Public Prosecutor for the State, the only question to be considered is whether the seizure and arrest of the appellant in the present case is vitiated and is there any legal impediment in accepting the evidence connected with the search and seizure of the contraband article and the arrest of the accused as the same was done by CWs.6 and 7?. As the main argument is confined to the authority of CWs.6 and 7 for the search, seizure and arrest of the accused, according to me, this Court need not go into the other materials and evidence on record. In the present case, when PW1 was examined, he had already deposed regarding the receipt of the information and its recording and steps taken by him towards the compliance of Sections 42 and 57 of the NDPS Act. Exts.P1 and P10 are the documents connected therewith which would show the compliance of the mandatory provisions of the above section and the oral evidence of PW6 further reinforced the above procedural compliance. PW1 has further deposed about the presence of the Inspector of the Narcotic Cell. PW1 has no claim that the search of vanity bag, possessed by the appellant, was physically conducted by himself and he physically arrested the appellant. PW1 is specific in his deposition that MO1 vanity bag, which was in the hands of the accused, was got examined by woman Police Constables CWs.6 and 7 in his presence as well as in the presence of PW5. According to the learned counsel for the appellant, the woman Police Constables are not empowered Officers under Section 42(1) of the NDPS Act and therefore, the search, seizure and arrest conducted by them are rendered as illegal and unacceptable. Therefore, according to the learned counsel, in the light of the decision of the Apex Court reported in Dilip and another's case [cited supra] and particularly in view of the decision of the Apex Court in Baldev Singh [cited supra], the search and arrest is illegal.

12. I am unable to sustain the above contention. As I indicated earlier, PW1 has no claim that he physically conducted the search of either the vanity bag or the person of the accused and effected her arrest. In the chief examination, PW1, after

stating about securing the presence of PW5, has deposed as follows:

## OTHER LANGUAGE

He had also deposed about the entire details of the search and seizure as I indicated earlier which is supported by the contemporary document, viz., Ext.P4 mahazar. Further, PW1 has deposed that the search, seizure and arrest of the accused were made in the presence of independent witness viz., PW2.

13. In this juncture, it is relevant to note that as per Section 50 of the NDPS Act, when a person of a female is to be searched, Section 50(4) of the N.D.P.S.Act mandates that no female shall be searched by anyone excepting a female. In the present case, as the prosecution did not rely on any evidence connected with the search of the person of the appellant, Section 50 is not attracted. No argument is also advanced in that direction. There is no provision made in the N.D.P.S.Act to the effect that while conducting the search of the person of a female, under Section 42(1) or 43 of the NDPS Act, such officer must be a female officer empowered under Section 42(1) or 43 of the NDPS Act. What is mandatory as per Section 42 of the NDPS Act is that in the case of entry, search, seizure and arrest without warrant or authorization, on the basis of an information received under Section 42(1) of the NDPS Act, such officer shall reduce into writing that information or the belief from personal knowledge of that officer and proceed to the place of occurrence where the contraband articles are kept or concealed in any building, conveyance or enclosed place and even if it is between sunset and sunrise, such officer can enter into the placed mentioned above and search such building, conveyance or enclosed placed and he can seize such drug or substance and detain such person and arrest him whom the officer has reason to believe, has committed the offence punishable under the provisions of the NDPS Act.

14. On a reading of Section 43 of the NDPS Act, it can be understood that in the case of seizure and arrest in public place, no such procedural formalities as envisaged by Section 42(1) are to be followed, The legislative authority, who in their wisdom incorporated sub-section(4) of Section 50, made no provision under Section 42(1) or 43 of the N.D.P.S.Act similar to such provision and to the effect that in case of search, seizure or arrest of a person of female, it has to be effected

only by a female officer, empowered under Section 42(1) or 43. In this juncture, Section 51 of the NDPS Act is relevant, which reads as follows:-

“51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.”

Thus, it can be seen that by invoking this enabling provision, an officer exercising his powers under this Act, connected with warrants, arrests, searches and seizures can invoke the relevant provision of Cr.P.C. for the said purposes. Section 46 of Cr.P.C. deals with arrest and the said section reads as follows:-

“46. Arrest how made,- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) xxxxx xxxxx xxxxx

(3) xxxxx xxxxx xxxxx

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”

Section 51(2) of Cr.P.C. deals with search of arrested person and the said section reads as follows:-

“51. Search of arrested persons.-

1. xxxxxxxxx

2. Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.”

3. In the present case, there was no search of the person of the appellant and search was conducted with respect to MO1 vanity bag which was possessed by the appellant and the said bag was got searched and inspected through CWs.6 and 7. According to me, PW1 obtained the service of CWs.6 and 7 woman Police Constables as the accused is a lady which action of PW1 is fully justified in view of Section 50(4) of the NDPS Act and Section 46 and 51 of the Cr.P.C.

15. Sub-section (4) of Section 50 is incorporated with a view to avoid unnecessary harassment of woman in case the personal search of such a female person is required. In the decision reported in State of Punjab v. Baldev Singh [1996(6) SCC 172], it is specifically held that when an empowered officer, conducting investigation, search or seizure under the provisions of the Cr.P.C., comes across a person being in possession of the narcotic drugs punishable under the provisions of the NDPS Act, then he has to follow the procedure prescribed by the NDPS Act from the stage at which the provisions of NDPS Act are attracted. In the very same decision, it is also held that if the officer, who is not empowered under the NDPS Act, conducting search, came across an incident in contravention of the provisions of the NDPS Act, such an officer has to inform the matter to the empowered officer and in that case also, the empowered officer has to start from that stage as per the provisions of the NDPS Act. According to me, in the present case, the procedure adopted by PW1 for getting the assistance of CWs.6 and 7 for searching MO1 vanity bag of the appellant is fully justified, especially in the light of the specific provisions contained in Section 50(4) of the NDPS Act as well as Section 51 of the very same Act, though Section 50 is not applicable in this case. Thus, the discretion exercised by PW1 in procuring the presence of CWs.6 and 7 for the purpose of searching MO1 vanity bag of the appellant is fully justified in view of Section 50(4) and 51 of the NDPS Act as well as Sections 46 and 51(2) of the Cr.P.C. and particularly in view of the procedure prescribed by the Honourable Apex Court in the Baldev Singh' case [1999(6) SCC 172]. By adopting such a procedure, PW1 had cleverly avoided a situation, which would have likely to be turned against him, if the search of the person or MO1 bag of the appellant, who is a lady, was conducted by himself. The evidence and materials referred to above would clearly show that MO1 vanity bag was not examined by PW1, who is the officer empowered under Sections 42(1) as well as 43 by getting the assistance of

CWs.6 and 7, woman Police Constables and such search and arrest was made in the physical presence of PW1 and under his direct control, superintendence and as instructed by him. The argument advanced by the counsel for the appellant would be legal and answerable by the prosecution, in the event of PW1, who received the information under Section 42(1) of the NDPS Act, delegating or authorizing other officials, who are not coming under the category of the officials empowered therein or the persons specifically excluded from exercising such powers. If such an argument is approved, in case a mahazar is written by an officer, not empowered under Section 42(1) or 43, but as instructed by an empowered officer under his direct control and supervision, such mahazar, search, seizure and arrest thereto have also to be held as illegal and improper.

16. The Honourable Apex Court, in the decision reported in *Durand Didier v. Chief Secretary, Union Territory of Goa* (AIR 1989 SC 1966), while considering the scope and object of the Act 81 of 1985, has held in paragraph 24 as follows:-

“24. With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.....”

In another decision in *Raj Kumar Karwal v. Union of India and others* [AIR 1991 SC 45], it was held as follows:-

“.....However, with the increase in drug abuse and illicit drug traffic certain deficiencies in the existing laws surfaced which made it necessary for Parliament to enact a

comprehensive legislation sufficiently stringent to combat the challenge posed by drug traffickers.....” In the Division Bench decision of the Gauhati High Court in Sankar Singh v. State of Assam and another (1994 Cr.L.J 213), His Lordship Justice U.L.Bhat, the then Chief Justice of the Gauhati High Court, after having considered the object of the Act, held that the object of the Act, inter alia, is to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances, and overruling the technical grounds urged on the basis of Sections 167, 437 and 439 of the Cr.P.C., further held that the statement of objects and reasons of the Amending Act 2 of 1989 would show that the Legislature intended to overcome those types of technical grounds contained in proviso(a) to sub-section (2) of Section 167 of the Cr.P.C. According to me, as rightly held by the Apex Court, the clandestine smuggling of narcotic drug and psychotropic substances into our country and the illegal trade of such drugs and substances have led to drug addiction of the sizeable section of youth and students, both male and female, as a result of which, the dynamic youths are being paralysed putting their family under misery. Of course, this Court cannot shut its eyes towards the realities that innocent persons are being involved in the offence because of their poor family background and social inequalities. The only interest of the drug mafia is to make unlawful enrichment and minting of money and the philosophy and system which interested in such exploitation, are closing the eyes against the illegal activities of the drug mafia since such youth force, who are expected to challenge the economic injustice and social inequalities, will be kept away. Reports show that large scale of illegal import of drugs are carried out through the Indian borders by the extremists and fundamentalists, who attract the youths by offering drugs and they are being brainwashed against motherland and its integrity and unity. Thus, the sizeable section of students and youth, who are expected to participate in the reconstruction of our nation and capable to contribute towards the intellectual and economical development of the country, are mentally and physically rendered as unfit. The hyper technical arguments advanced by the learned counsel for the appellant, if accepted, will only protect and promote the interest of drug mafia, and ultimately the same will be against the object of the Act and national interest as deliberated through the above decision of the Honourable Apex Court. Any

approach, in a case in which the offences covered by the BDPS Act are involved, ignoring the overall interest of our nation and the necessity to eradicate the menace caused by drug mafia will be unscientific and certainly against the object of the NDPS Act, itself. Therefore, by no stretch of imagination, it can be concluded and legally held that the search and arrest made by CWs.6 and 7 under the direct control, superintendence and as directed by PW1, who is an empowered officer under Sections 42(1) and 43 of the NDPS Act, were vitiated and in violation of the mandatory provisions contained in Section 42(1) or 43 of the NDPS Act. Therefore, there is no objection in accepting and acting upon the evidence involved in the case connected with the search, seizure and arrest.

17. Though the learned counsel cited the decision reported in Dilip's case (2007 KHC 3022), the facts and circumstances involved therein and the dictum laid thereon by the Apex Court are not applicable and has no direct bearing on the issue involved in this case, and hence the same is in no way helpful for the appellant in the present case. Another decision relied on by learned counsel for the appellant is the decision of the Apex Court reported in Baldev Singh's case (1999 KHC 707). No doubt, in the said decision, the Apex Court has held that the evidence with respect to the seizure of illicit articles taken in violation of the provisions, should be excluded. It is relevant to note that the above dictum is laid down by the Apex Court connected with the scope and applicability of Section 50 of the NDPS Act. In the present case, Section 50 of the NDS Act is not attracted and no arguments are advanced connected with Section 50. The attempt of the learned counsel for the appellant is to convince this Court that the evidence connected with the seizure of contraband article from the appellant is not admissible as the search was illegal since the same was not done by the empowered officer under Section 42(1) or 43 of the NDPS Act and therefore, in the light of the decision in Baldev Singh's case (1999 KHC 707), the evidence has to be excluded. If that be so, the appellant is entitled to get an acquittal. I have already found as per the discussion contained in the foregone paragraph that the search is conducted by PW1, the empowered officer by getting the assistance of CWs.6 and 7, who are woman Police Constables, and the same is legally and factually correct and the same is in no way violated the mandatory provisions contained in Section 42(1) of the NDPS Act. Therefore, the evidence connected

with the search is not liable to be excluded, but is admissible and there is no legal bar in admitting the same and acting upon such evidence. Therefore, the dictum laid down in Baldev Singh's case (1999 KHC 707) is also not attracted in this case

18. In this juncture, it is relevant to note that the Madras High Court in the decision reported in Sakunthala v. State [1999 Cr.L.J 3653] has held as follows:-

“9. In all these cases, the search and seizure was made in the presence of the Superintendent of Police, who has been examined as one of the witnesses in these cases. The question of competency in conducting investigation has never been raised either before the lower Court or in the grounds of appeal. The Superintendent of Police who has been examined as a witness in these cases would specifically state that he participated in the process of seizure and the investigation. Moreover, the concerned village Administrative Officer also has been examined and he has stated that the seizure was done by the Inspector of Police in the presence of the Superintendent of Police. Admittedly, both the Inspector of Police and the Superintendent of Police have been examined in all these cases. Therefore, there is not merit in the contention raised by the counsel for the appellants.”

The dictum laid down in the said case squarely applies in this case. As rightly pointed out by the learned Public Prosecutor, the Honourable Apex Court in the decision reported in P.P.Fathima v. State of Kerala [(2003)8 SCC 726], in an identical case, where the lady constable, accompanying the competent Police Officer, searched the appellant and found in a purse, carried by the appellant, 750 mg. of brown sugar packed in four packets, and though the above facts were brought to the notice of the Supreme Court, it was held that the search was not illegal. In the present case also, it was PW1, who is an empowered officer, detected the crime and search and seizure of the contraband drug and arrest of the accused were done by the woman Constables in his presence as directed by him as the appellant/accused is a lady. If the search, seizure and arrest of an accused involved in an offence contemplated under the NDPS Act had been even though physically done by officials or persons not empowered under Section 42(1) or 43 of the NDPS Act, the same will not vitiate that part of the investigation or the

trial, if the same are done in the physical presence, direct control, superintendence and direction of a competent and empowered officer under Section 42(1) or 43, for justifiable reasons, supported with proper and convincing explanation, as in the present case, particularly in the light of the provisions contained in Sections 50(4) and 51 of the NDPS Act as well as Sections 46 and 51(2) of the Cr.P.C. Therefore, it cannot be held that the arrest and seizure was illegal as the search and arrest were conducted by the woman Police Constables, who were not empowered either under Section 42(1) or 43 of the NDPS Act. Thus, according to me, there is no legal impediment in accepting the evidence of prosecution connected with the search and seizure of the contraband article from the appellant and her arrest and the evidence connected therewith are legally acceptable.

19. Though counsel for the appellant initially advanced a contention that the provisions of Section 50 are not complied with, he did not stick on that argument in the light of the decision of the Apex Court in *State of Rajasthan v. Bhanwar Lal* (AIR 2005 SC 2265), since the person of the appellant was searched by CWs.6 and 7 as directed by PW1 in the presence of PW5, the Gazetted Officer and especially, the contraband articles were seized from MO1 vanity bag possessed by the appellant at the relevant time, though the strict compliance of Section 50 was not attracted.

20. It is contended by the counsel that as per Exts.D1 and D2, the claim of the prosecution regarding the search and seizure of the contraband articles is incorrect and there is no evidence to prove the same. The said argument was rightly considered by the trial court and rejected the same. I have also perused Exts.D1 and D2 and Ext.D1 would show that the police jeep, which was used by PW1, to reach the place of occurrence, has gone to the places like Kaloor Stadium, Karakulam, Chalikkavattom, Chembumukku and Vennala etc, on 24.7.2010, the jeep was started from the Police Station at 8.30 a.m. As the jeep was taken at 8.30 a.m. and Kaloor is the first place mentioned in Ext.D1, the learned counsel submitted that in the absence of any endorsement to the effect that the jeep was taken to the Kaloor Stadium after five o' clock on 24.7.2010, it cannot be said that the vehicle is taken to the Kaloor stadium at five o' clock as claimed by PW1. No witness is cited and examined by the defence to prove that

on 24.7.2010, when the jeep was started from the Police Station at 8.30 a.m., it was straight away taken to the Kaloor Stadium at 8.30 a.m. and nothing brought on record to show that the vehicle was not taken to the Kaloor Stadium at five o'clock on 24.7.2010. As rightly held by the learned Judge of the trial court, Ext.D1 would show the starting time of the jeep from the Police Station and the places where the jeep was taken on that day. When the evidence of PW1 positively proves about the search, seizure and arrest of the appellant from the place of occurrence at the relevant time, Ext.D1 cannot be taken into consideration to hold that the evidence of the prosecution in this regard is incorrect, improper and unbelievable. It is also contended by the learned counsel that the prosecution has not complied with the provisions contained in Section 57 of the NDPS Act. The above contention is against the documentary evidence i.e., Ext.P10 which contained the acknowledgment recorded by PW5, the immediate superior officer of PW1 and when PW5 was examined, he had admitted the receipt of Ext.P10. So, the above contention of the appellant also fails. In the light of the above discussions and the facts and circumstances involved and particularly the evidence and materials referred to above, according to me, the findings of the court below are absolutely correct and legal and I find no reason to interfere with the same. Accordingly, the conviction recorded by the court below against the appellant is confirmed.

21. Regarding the sentence, according to me, as the trial court has imposed only the minimum punishment against the appellant on her conviction, no interference as well with the sentence is warranted.

In the result, there is not merit in the appeal and accordingly, the same is dismissed.

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