

NCB Vs. Mussa Azizi Marande
Case No. SC/401/18

07.08.2019

Present: Sh. Mukesh Malik, SPP for NCB.

Accused produced from JC.

Sh. M.F. Philip, Ld. Counsel for the accused.

Arguments on charge heard.

Ld. Counsel for the accused has only raised objection that there is no compliance of section 50 NDPS Act as the accused was neither produced before gazetted officer or magistrate while conducting personal search and in this regard he has relied upon the judgment titled as Deepak Sikodh Mahto & Ors. Vs. State CrI.A. 660/2017 dated 06.06.2019, Deepak Shamsheer Thapa CrI. A. 831/2014 dated 08.01.2019, Dharambir Vs. State (2018) 254 DLT 354 and Gurtej Singh Bath Vs. State (2018) 254 DLT 551.

Heard. Record Perused. Hon'ble Delhi High Court in case titled as Sayaed Md. Ridwan @ Munna to state CrI.A.785/2014 dated 22.02.2019 held as under:

11. A Constitution Bench of Supreme Court in Vijaysinh Chandubha Jadeja (supra) has ruled that Section 50 of the NDPS Act itself gives an option to the raiding officer to search any person and if such person requires, then such person ought to be produced before the nearest gazetted officer. In the instant case, appellants had refused to exercise their option to be searched in the presence of a gazetted officer. Supreme Court in Arif Khan (supra) has taken note of the afore-referred legal position, but has chosen to acquit accused on facts of said case. While relying upon the dictum of Constitution bench in Vijaysinh Chandubha Jadeja (supra), this Court holds that the giving of option to appellants to be

produced before a gazetted officer is sufficient compliance of Section 50 of the NDPS Act. As far as appellant -Sayaed Md. Ridwan @ Munna signing notice under Section 50 of NDPS Act in English is concerned, I find that though he claims to be illiterate, still such persons can and do sign in English and on this count also, benefit of doubt cannot be extended to appellant -Sayaed Md. Ridwan @ Munna.

12. As regards appellant -Gulzar Sheikh @ Sonu, he had clearly written on the Notice under Section 50 of the NDPS Act that he does not want to be searched in the presence of a gazetted officer. So, on this count, conviction of appellants cannot be faulted with.

Further, in case titled as Ram Gopal Vs. State Crl.A. 676/2016 dated 16.10.2018, the Hon'ble Delhi High Court held as under:

11. The Supreme Court therefore, has held that while the obligation of the authorised officer under Section 50(1) of the Act is mandatory and requires strict compliance, the suspect may or may not choose to exercise the right provided to him under the said provision. It was further held that the question whether or not the procedure prescribed under Section 50(1) of the Act has been followed and the requirement prescribed therein has been met, is a matter of trial.

12. In the present case, PW-7 Ct.Kheta Ramse, PW-8 HC Jagdish and PW-10 Inspector Satyawar have duly proved the service of mandatory notice under Section 50 of the Act (Ex.PW7/A) on the Appellant and refusal of the Appellant to exercise his legal right to be searched before a Gazetted Officer or the Magistrate, in his own handwriting

(Ex.PW7/B). In the statement of the Appellant recorded under Section 313 Cr.P.C., the Appellant had not denied his reply in Ex.PW7/B. Therefore in my opinion, the requirement of Section 50(1) of the Act has been duly complied with by the prosecution.

13. In Arif Khan (supra) on the facts of that case, the Court found that the mandatory procedure under Section 50 of the Act had not been satisfied. The said case was peculiar on its own facts and therefore, is distinguishable from the facts of the present case. In the present case, the prosecution has been able to prove its case through the testimonies of its witnesses and the documents produced on record.

Therefore, in view of the mandate of above judgment, it cannot be held at this stage that there is a violation of procedure envisaged u/s 50 in the present case.

Prima facie, there is sufficient material on record to frame charge against the accused u/s 21(c) NDPS Act. Charge has accordingly been framed to which he pleads not guilty and claims trial.

List this case for PE on 26.09.2019 and 28.09.2019.

(Ajay Kumar Jain)
Special Judge/NDPS
New Delhi/07.08.2019