

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1970 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
MERUBHAI MOHANBHAI THAKKAR

Appearance:

MS JYOTI BHATT ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s)
No. 1

HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1

MASUDIQBAL H RATHOD(7919) for the Opponent(s)/Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 20/08/2026**JUDGMENT**

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 18.09.2012 passed by the learned 6th (Ad-hoc) Additional Sessions Judge, Mirzapur, Ahmedabad (hereinafter be referred to as "the Trial Court") in Sessions (NDPS) Case No.01 of 2010, whereby the Trial Court has acquitted the respondent-accused from the charges under Sections 8 and 20(b)(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter be referred to as the "NDPS Act").

2. The brief facts of the prosecution case is that on 06.02.2010, the complainant i.e Police Sub Inspector Shri G.D. Palsana, Bavla Police Station, received a secret information that one Merubhai Mohanbhai Thakkar along with his son Jayendra Merubhai Thakkar, who were residing at Ramnagar Paru, situated near Bavla Town, were having possession of ganja and illegally selling it. That, as per the information, the complainant called two panch witnesses through Police Constable Baldevbhai Jivabhai, one Babubhai Chhotabhai along with his weight machine and other raiding party and informed about the raid. Thereafter, the complainant, panch witnesses and raiding party proceeded for raid and went to the residence of accused, where the son of the accused was present. That, the complainant gave his identity and searched the premises and in one suitcase, total 2.780 kilogram ganja was found without pass and permit in the illegal possession of the accused, which was kept in his house. Thereby, the accused committed an offence punishable under Sections 8 and 20 (b) (2) of the NDPS Act. Hence, a complaint was lodged before the police station for the aforesaid offences.

2.1 After completion of the investigation, a chargesheet was filed against the accused. Thereafter, charge was framed against him for the offences punishable under Sections 8 and 20(b)(2) of the NDPS Act. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution, therefore, led 14 oral as well as 18 documentary evidences in support of its case. Upon completion of the trial, the Trial Court, by judgment and order dated 18.09.2012 acquitted the accused of the offences with which he was charged.

2.2 The State of Gujarat, being aggrieved and dissatisfied with the

aforesaid judgment and order of acquittal, has preferred the present Appeal.

3. Heard Ms. Jyoti Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat and Mr.Masudiqbal H Rathod, learned counsel for the respondent – accused at length.

4. Ms. Bhatt, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined 14 witnesses and produced 18 documentary evidences, despite this fact, the trial Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Ms.Bhatt, learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. She has submitted that the Trial Court erred in holding that the prosecution failed to prove that on 06.02.2010 at about 13:00 hours, 2.780 kilograms of ganja, valued at Rs.7750/-, was seized from the illegal possession of the accused at his house. The said finding is contrary to the evidence on record.

4.1 Learned APP submitted that the Trial Court has erred in holding that the accused could not be convicted for the offences punishable under Sections 8 and 20(b)(2) of the NDPS Act, despite sufficient evidence establishing his conscious and illegal possession of the

contraband. She has submitted that the complainant PW-12, Gautambhai Devrajbhai Palsana, Police Sub Inspector, Bavla Police Station, examined at Exh:29 and his complaint produced at Exh: 33. His evidence establishes that, after receiving secret information, the necessary procedure was followed and a raid was conducted, during which 2.780 kilograms of ganja valued at Rs.7750/- was seized from the accused. His evidence is duly corroborated by the other oral and documentary evidence on record. She has submitted that PW-6 Babubhai Chhotabhai Soni at Exh: 20, PW:7 Bharatsinh Amarsinh Chauhan at Exh:22, PW:8 Himatsinh Sardarsinh at Exh: 24, Pw-9 Kanaiyalal Dhulabhai Vagheshwari at Exh: 25, PW-10 Somabhai Gebabhai at Exh. 26, and PW:11 Abdulrajak Abdulkadar at Exh:27, all of these witnesses have supported the case of the prosecution. There was no valid reason for the Trial Court to discard their evidence.

4.2 Learned APP has submitted that the trial Court has erred by not appreciating the evidences such as Panchnama of recovery muddamal at Exh: 10, Sanction letter of raid at Exh:11, Panchnama of scene of offence at Exh:16, Arrest Panchnama of accused at Exh: 19, FSL report at Exh: 40 and FSL Botanical Report at Exh:41. She has submitted that the trial Court ought to have appreciated that it was proved from the F.S.L report and other materials available on the record of the case that the accused committed offence under Section 8 and 20 (b) (2) of the N.D.P.S. Act and the complainant with his staff recovered the illegal substances from the accused.

4.3 Learned APP submits that the necessary procedure as provided under Section 42 (1) and 42 (2) of the NDPS Act has been fully complied with by the authorities. It has proved that the muddamal

article was in the possession of the accused person. The Trial Court, without properly considering the material evidence, committed a grave error in discarding the prosecution case.

4.4 In view of the cogent and reliable oral and documentary evidence, the learned APP submitted that the Trial Court ought not to have acquitted the accused. The findings recorded in the impugned judgment are contrary to the evidence on record and suffer from serious errors of appreciation. It was, therefore, submitted that the judgment and order of acquittal deserves to be quashed and set aside by this Hon'ble Court.

5. Per contra, Mr.Rathod, learned counsel for the respondent - accused has supported the impugned judgment and order and has submitted that the trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against him. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the trial Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has prayed to confirm the impugned judgment and dismiss the present appeal.

6. I have heard the learned counsel for the respective parties and perused the materials on record. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the questions that arise for determination are as under:-

- (1) whether the trial Court has rightly justified in passing the judgment and order of acquittal.
- (2) whether the trial Court has rightly appreciated the evidence led by the prosecution in recording the reasons.
- (3) whether there is any illegality, irregularity and perversity in the impugned judgment and order of acquittal.

7. On perusal of the records, it appears that the allegation against the respondent was that, on 06.02.2010, the complainant received secret information that the present respondent was engaged in the business of selling contraband articles, namely, ganja, which was allegedly kept at his residence. Pursuant to the said information, the complainant, along with other police personnel, visited the house of the respondent. It appears that since the respondent was not present at the house, his minor son, namely, Jayendra Mehrubhai Thakkar, was present there and in his presence, the search of the premises was carried out, during which 2.780 kilograms of ganja was allegedly found and seized. It is the case of the prosecution that the signature of the minor son of the respondent was obtained on the relevant document, which was produced on record at Exhibit 11. The investigation was carried out by PW-12, Gautambhai Devrajbhai Palsana, whose deposition is at Exhibit 29. PW-12 deposed before the trial Court that, on the basis of the secret information received through his informant, he had searched the premises of the accused. However, it appears that the secret information received by PW-12 was not reduced into writing and it was not produced before the trial Court. PW-12 has further admitted in his cross examination that at the time of conducting the search, he did not have any search warrant issued by his superior officer as provided under section 41 of the

NDPS Act. The warrant was received subsequently. Thus, it appears that he has searched the premises and seized the goods in anticipation of its issuance.

8. If the evidence of PW-7, Bharatsinh Amarsinh Chauhan, who was a member of the raiding party accompanying the complainant-PW-12, is perused, it emerges that they proceeded to the place along with witness Babubhai Chotabhai Soni and an electric weighing machine. It appears that in his cross-examination, PW-7 admitted that no investigation was carried out to ascertain whether the premises was owned or occupied by the respondent, nor was any documentary evidence collected in that regard and only a copy of the ration card was obtained. PW-8, Himatsinh Sardarsinh, was also a member of the raiding party and from his deposition, an interesting information emerges that, PW-8 had stated that when PW-12 informed him about the information received, no one was present at the police station. However, the evidence of PW-7 shows that PW-7 was also present at the police station and that, in his presence, the panch witnesses and the goldsmith for weighing the contraband article were called. It appears that none of the independent witnesses have supported the case of the prosecution. Even panch witnesses have not supported the case of the prosecution and only the police witnesses have deposed before the trial Court to prove the charge.

9. On perusal of the deposition of PW-6, Babubhai Chhotabhai Soni being goldsmith, it appears that he had accompanied the Investigating Officer and the members of the raiding party to the place of the respondent. He stated that the certificate was collected by the police constable-PW8 after about two days. However, the date

mentioned on the said certificate was 06.02.2010, i.e. the very date on which the search was conducted. Therefore, this circumstance creates serious doubts in the case of prosecution. Another relevant aspect of the matter is that, though the prosecution claims that the search was conducted pursuant to prior secret information, such information was not reduced into writing. The prosecution further claims that the signature of the minor son, Jayendra Thakkar, was obtained at the time of the search, however, on perusal of the document at Exhibit 11, it appears that the document was not signed by the minor, Jayendra Thakkar. In any event, even assuming that the minor had signed the document, such consent cannot be considered in the eyes of law, having regard to the fact that he was a minor and was not competent to give such consent. In the absence of any cogent evidence establishing that the present respondent was present in the house or that he was in conscious possession of the contraband article, the prosecution was required to establish the said facts beyond reasonable doubt.

10. On perusal of the impugned judgment and order and the evidence on record, it clearly transpires that there was a serious violation of provision of Sections 41, 42, 43 read with Sections 50 and 57 of the NDPS Act. The search and seizure was also not conducted according to the provision of section 50 of the NDPS Act because it is an admitted fact that the search was carried out in presence of the minor son of the respondent and the muddamal was seized in his presence. Moreover, the prosecution has failed to establish the ownership of the premises in question by the respondent. There are also major contradictions with regard to the seizure of the muddamal and the manner in which the seized contraband was kept in safe

custody. On consideration of the depositions of PW-10 and 11 at Exhibits 26 and 27 respectively, major contradictions are found with regard to the seizure and custody of the muddamal.

11. At this stage, it is appropriate to refer the decision of the Honourable Apex Court in the case of **State of Punjab vs. Balbir Singh reported in AIR 1994 SC 1872**, whereby Hon'ble Apex Court has held as under:-

"Head Note (D) Narcotic Drugs and Psychotropic Substance Act (61 of 1985), Ss. 50, 41, 42 - Search and Seizure - On prior information empowered officer acting under S.41(2) of S.42-Should comply with provisions of S.50-Provisions of S.50 are mandatory.

17. One another important question that arises for consideration is whether failure to comply with the conditions laid down in Section 50 of the NDPS Act by the empowered or authorised officer while conducting the search, affects the prosecution case. The said provision (Section 50) lays down that any officer duly authorised under Section 42, who is about to search any person under the provisions of Sections 41, 42 and 43, shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such requisition is made by the person to be searched, the authorised officer concerned can detain him until he can produce him before such Gazetted Officer or the Magistrate. After such production, the Gazetted Officer or the Magistrate, if sees no reasonable ground for search, may discharge the person. But otherwise he shall direct that the search be made. To avoid humiliation to females, it is also provided that no female shall be searched by anyone except a female. The words "if the person to be searched so desires" are important. One of the submissions is whether the person who is about to be searched should by himself make a request or whether it is obligatory on the part of the empowered or the authorised officer to inform such person that if he so requires, he would be produced before a Gazetted Officer or a Magistrate and thereafter the search would be conducted. In the context in which this right has been conferred, it must naturally be presumed that it is imperative on the part of the officer to inform the person to be searched of his right that if he so requires to be searched before a Gazetted Officer or a Magistrate. To us, it appears that this is a valuable right given to the person to be searched in the presence of a Gazetted Officer or a Magistrate if he so requires, since such a search would impart much more authenticity and creditworthiness to the proceedings while equally providing an important safeguard to the accused. To afford such an opportunity to the person to be searched, he must be aware of his right and that can be done only by the authorised officer informing him. The language is clear and the provision implicitly makes it

obligatory on the authorised officer to inform the person to be searched of his right.

21. In Miranda v. Arizona¹⁷ the Court, considering the question whether the accused be apprised of his right not to answer and keep silent while being interrogated by the police, observed thus :

"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere."

It was further observed thus :

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system that he is not in the presence of persons acting solely in his interest."

When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50 in the context is all the more important and valuable. Therefore it is to be, taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate. Thus the provisions of Section 50 are mandatory.

25. The question 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 provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC 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 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.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant

for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal.

Likewise only empowered officers or duly authorized officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) 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) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr. PC fails to strictly comply with the provisions 'of Sections 100 and 165 Cr. PC including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of Cr. PC namely Sections 100 and 165 Cr. PC and if there is no strict compliance with the provisions of Cr. PC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case

12. At this stage, it is appropriate to refer the decision in case of ***H.I. Majmudar Intelligence Officer vs. Santosh Pandurang Setty reported in 2026 (0) AIJEL HC 253136***, whereby the Hon'ble Apex Court has held as under:-

'Heard Note (c) Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 42, 50 and 57- Search and seizure Mandatory provisions - Non-compliance - At the time of search and seizure, there was clear violation of S. 42 of the NDPS Act - Held, provision of search and seizure under S. 42 is mandatory and non-compliance thereof is impermissible under law - Reliance placed on Boota Singh v. State of Haryana, (2021) 19 SCC 606; Karnail Singh v. State of Haryana, (2009) 8 SCC 539; Sukhdev Singh v. State of Haryana, (2013) 2 SCC 212; State of Rajasthan v. Jagraj Singh @ Hansa, (2016) 11 SCC 687.

8. Further, re-appreciating the evidence, it appears that, as per the case of the prosecution, the statements of the witnesses were recorded and as per the case of the prosecution, the accused Nos. 1 to 3 were engaged in transportation of contraband, and the said fact is revealed on basis of statements of the co-accused i.e., accused Nos. 2 and 3, but nowhere has any evidence supported the said contention, and in absence of any legal evidence qua involvement of the accused, more particularly how and from where the contraband was loaded and shifted to the godown, no evidence on record, and even no independent witness has supported the case of the

prosecution qua the alleged conspiracy or meeting of minds on the part of the accused persons. Even as per the complaint, the prosecution has relied upon the statements of the accused persons as incriminating evidence, and such inculpatory statements are also not true which support any evidence and no corroborative piece of evidence is on record to show that the accused has hatched conspiracy and engaged in transportation of huge contraband. The only evidence led before the learned Sessions Court is that the accused No.2 was present at the time of raid, and it is stated that contraband was seized from his possession but no evidence qua accused Nos. 1 and 3 has been collected. Not only that, the ownership of the godown is also not proved and the owner of the godown is not cited as a witness. The independent witness, Deepak Parikh, turned hostile and has not supported the case of the prosecution. Even based on whatever allegations are levelled against the accused and evidence led, it clearly reveals that the prosecution has not followed the mandatory provisions for search and seizure under the NDPS Act. At the time of search, there was a clear violation of Section 42 of the NDPS Act and the learned Sessions Judge has also assigned reason for that qua violation of Sections 42, 50 and 57 of the NDPS Act. The provision of search and seizure under Section 42 is mandatory and in this regard, reference is required to be made to the judgments of the Hon'ble Apex Court in the case of Boota Singh Vs. The State of Haryana reported in (2021) 19 SCC 606; Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 539; Sukhdev Singh Vs. State of Haryana, reported in (2013) 2 SCC 212, and State of Rajasthan Vs. Jagraj Singh @ Hansa, reported in (2016) 11 SCC 687. Non-compliance of the mandatory provision of Section 42 is absolutely clear from the record and such non-compliance is impermissible under the law. Hence, the learned Sessions Judge has not committed any error in recording findings qua non-compliance of mandatory provisions under the NDPS Act."

13. In the decision in case of **Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 539**, the Hon'ble Apex Court has held as under:-

"(6) In the light of the above decisions and the principles enunciated therein, it would be appropriate to refer to Section 42 of the NDPS Act which is relevant for the present purpose as it stood before its amendment by Act 9 of 2001. It reads as under:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government 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 any document 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 sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior."

Sub-section (2) as replaced by Act 9 of 2001 is extracted below:

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

15) Under Section 42(2) as it stood prior to amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to immediate official superior and not to any other condition of the Section. Abdul Rashid (supra) has been decided on 01.02.2000 but thereafter Section 42 has been amended with effect from 02.10.2001 and the time of sending such report of the required information has been specified to be within 72 hours of writing down the

same. The relaxation by the legislature is evidently only to uphold the object of the Act. The question of mandatory application of the provision can be answered in the light of the said amendment. The non-compliance of the said provision may not vitiate the trial if it does not cause any prejudice to the accused.

17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section

42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of

section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001".

14. In the decision in case of **Vijaysinh Chandubha Jadeja vs. State of Gujarat reported in 2011(1) SCC 609**, the Hon'ble Apex Court has held as under:-

"18.Although the Constitution Bench did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

19.As noted above, sub-sections (5) and (6) were inserted in Section 50 by Act 9 of 2001. It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in the sub- sections, viz. when the authorised officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc., or article or document, he may proceed to search the person instead of taking him to the nearest gazetted officer or Magistrate. However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded, to his immediate official superior within seventy two hours of the search. In our opinion, the insertion of these two sub-sections does not obliterate the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate. The object and the effect of insertion of sub-sections (5) and (6) were considered by a Constitution Bench of this Court, of which one of us (D.K.

Jain, J.) was a member, in Karnail Singh Vs. State of Haryana¹³. Although in the said decision the Court did observe that by virtue of insertion of sub-sections (5) and (6), the mandate given in Baldev Singh's case (supra) is diluted but the Court also opined that it cannot be said that by the said insertion, the protection or safeguards given to the suspect have been taken away completely. The Court observed :-

"Through this amendment the strict procedural requirement as mandated by Baldev Singh case was avoided as relaxation and fixing of the reasonable time to send the record to the superior official as well as exercise of Section 100 CrPC was included by the legislature. The effect conferred upon the previously mandated strict compliance with Section 50 by Baldev Singh case was that the procedural requirements which may have handicapped an emergency requirement of search and seizure and give the suspect a chance to escape were made directory based on the reasonableness of such emergency situation. Though it cannot be said that the protection or safeguard given to the suspects have been taken away completely but certain flexibility in the procedural norms were adopted only (2009) 8 SCC 539 to balance an urgent situation. As a consequence the mandate given in Baldev Singh case is diluted."

22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in Re Presidential Poll¹⁴, it is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though Section 50 gives an option to the

empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

15. In the decision in case of **State of Himachal Pradesh vs. Surat Singh reported in 2026 (0) AIJEL SC 76708** the Hon'ble Apex Court has held as under:-

"18. Their lordships of the Hon'ble Supreme Court in the case of Suresh and others versus State of Madhya Pradesh, reported in (2013) 1 SCC 550, have held that in a case where the accused were merely asked whether they would offer their personal search to police officer concerned or to gazetted officer and the appellants gave their consent for their personal search by police officer concerned, it will amount to non-compliance of Section 50(1) of the ND & PS Act. Their lordships have held as follows:

"16) The above Panchnama indicates that the appellants were merely asked to give their consent for search by the police party and not apprised of their legal right provided under Section 50 of the NDPS Act to refuse/to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a gazetted officer or a Magistrate but consent was sought for their personal search. Merely asking them as to whether they would offer their personal search to him, i.e. the police officer or to gazetted officer may not satisfy the protection afforded under Section 50 of the NDPS Act as interpreted in Baldev Singh's case.

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in Baldev Singh's case, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but "failure to inform" the person concerned of his right as emanating from sub-section (1) of Section 50 may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law. In Vijaysinh Chan Jadeja's case (supra), recently the Constitution Bench has explained the mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance. The Bench also held that failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during

such search. The concept of substantial compliance as noted in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) were not acceptable by the Constitution Bench in Vijaysinh Chandubha Jadeja, accordingly, in view of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable in law."

18. Their lordships of the Hon'ble Supreme Court in case of *State of Rajasthan versus Parmanand and another*, reported in (2014) 5 SCC 345, have held that if merely a bag is carried by person is searched without there being any search of his person, S. 50 will have no application but if bag carried by him is searched and his person is also searched, S. 50 would be attracted. Their lordships have also held that it was improper for PW-10 S.I. "Q" to tell respondents that a third alternative was available. It has been held as follows:

15. "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 No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

16. It is also worthwhile to refer the decision of the Hon'ble Apex Court in case of ***State of Rajasthan vs. Jag Raj Singh reported in 2016 (11) SCC 687 and in the case of Boota Singh vs. State of Haryana reported in 2021 (19) SCC 606*** whereby in similar set of facts the Hon'ble Apex Court has deal with Sections 42, 43 and 50 of the NDPS Act.

17. The Trial Court, after considering the entire evidence on record and the submissions advanced by the learned counsel for the respective parties, has recorded reasons from paragraph 57 onwards of its impugned judgment and order, and has also considered the judgments of the Hon'ble Supreme Court as well as of other Hon'ble High Courts dealing with the relevant provisions of the NDPS Act

which reads as under:

[1] Mohammed Alamkhan Vs. Narcotic Control Bureau and Ors. reported in 1997(1) CCR 190; [2] Radheshyam Vs. State of Rajasthan reported in 1996(4) CCR 552; [3] Matlub Vs. State(Delhi Administration) reported in 1997 (2) CCR 835; [4] Kamlesh Sharma and Lokeshwarsingh Panta Vs. State of Himachal Pradesh reported in 2002(1) CCR 32; [5] Kapil Dev Vs. State of Punjab reported in 121(2005) DLT 380; [6] Darshan vs. State of Madhya Pradesh reported in 2002(2) CCR 542; [7] State of Rajasthan Vs. Gurmail Singh reported in AIR 2005 SC 1578; [8] Desh Raj Vs. State of Punjab reported in 2005(3) RCR 334; [9] Gordhansingh Vs. State of Rajasthan reported in 2006(2) CCR 565; [10] Mohanlal Vs. Union of India reported in 2006(2) CCR 502; [11] Ravindran alias John Vs. Superintendent of Customs reported in 2007(3) CCR 28; [12] Maheshsingh Vs. State of Bihar (presently Jharkhand) reported in 2007(2) CCR 200; [13] Balvirsingh Vs. State of Orissa reported in 1996(4) CCR 21; [14] Pradeepkumar Jain vs. State of Rajasthan reported in 2000(1) CCR 385; [15] Ganesh Vs. State of Madhya Pradesh reported in 1998 (1) CCR 43.

18. In view of the aforesaid circumstances, the Trial Court recorded a finding that the prosecution had failed to establish the basic ingredients of the offence against the present respondent. Even the Trial Court has observed that the prosecution has not complied with the mandatory provisions of the NDPS Act. After considering the evidence on record and relying upon the aforesaid decisions referred to in the impugned judgment, the Trial Court recorded cogent reasons and ultimately passed the impugned judgment and order of acquittal.

19. Further, on perusal of the record of the appeal, it transpires that the respondent-accused has established his innocence before the Trial Court and that, after due appreciation of the oral as well as documentary evidence and other material placed on record, the Trial Court has rightly passed the impugned judgment and order of acquittal. The findings recorded by the Trial Court are just, proper and in accordance with the settled principles of law and, therefore, no interference is warranted by this Court.

20. It is well settled by catena of decisions that the Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

21. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be

characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

22. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, I am in complete agreement with the findings recorded by the trial Court.

23. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble

Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered

judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

24. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

25. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

26. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the Trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

ANUSRI