



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Criminal Appeal No: 409 of 2015

Reserved on: 19.06.2026.

Pronounced on : 23.07.2026.

State of Himachal Pradesh

...Appellant

versus

Ram Lal

...Respondent

Coram:

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹Whether approved for reporting? **Yes.**

For the appellant: Mr. I.N. Mehta, Senior Additional
Advocate General.

For the respondent: Mr. Bhupinder Ahuja, Advocate.

Ranjan Sharma, Judge

State of Himachal Pradesh, being the appellant herein, has come up before this Court, under Section 378 of the Code of Criminal Procedure assailing the judgment dated 09.03.2015, **[referred to as the Impugned Judgement, herein]** passed by the Learned Special Judge-II, Kullu [HP], in Sessions Trial No.24 of 2014 [2013], titled *State of Himachal Pradesh vs. Ram Lal*, acquitting the Respondent-accused herein, from the charge under Section 20 of the Narcotic Drugs and Psychotropic

¹ Whether reporters of Local Papers may be allowed to see the judgment?



Substances Act, 1985 **[referred to as 'NDPS Act' *herein*]**, alleging recovery of 354 grams of Charas-*Cannabis*--Charas from his conscious and exclusive possession, on 23.02.2013.

PROSECUTION STORY:

2. Prosecution story is that on the evening of 23.02.2013, a police party headed by PW-2, ASI Jagjit Singh and PW-1 Head Constable Rakesh Kumar, HHC Lal Singh and HC Narayan Chand proceeded for patrolling in official vehicle bearing registration No. HP 34A-9987, which was driven by Constable Tej Singh and on reaching village 16 Miles at about 07:45 p.m., they noticed respondent-accused inside the rain shelter, who on seeing the police stood up and turned his back towards the police officials and tried to cover his face. On this behavior, a suspicion arose in the mind of police and the respondent-accused was nabbed and on asking, the accused disclosed his name as Ram Lal S/o Shri Munshi Ram. It is averred that since the respondent-accused failed to give any satisfactory reply, therefore, the police decided to search the respondent-accused. Accordingly, PW-2



ASI Jagjit Singh, gave an option to the respondent-accused for personal search and on the directions of SDPO Manali, he was taken for search before PW-7 SDPO Sanjeev Chauhan in Police Station Manali. Upon search, the alleged contraband was recovered from sports shoes of the respondent accused and after weighing the alleged contraband the same came out to be 350 grams of Cannabis /Charas. The recovered contraband including shoes, wrapper etc. were sealed and photographs of recovery, Ext.P-6 to Ext. P-8 were taken. The accused was detained vide Memo Ext.PW-1/F and thereafter PW-2 ASI Jagjit Singh, handed over the Rukka Ext.PW-2/B alongwith the case property to PW-8 SHO-Neel Chand, Police Station Manali, on which the FIR Ext. PW-8/A, was registered.

2(i). After completing all codal formalities, the seized contraband was sent to Forensic Laboratory, Junga. Investigation was completed by the police and Challan was filed in competent Court leading to the commencement of trial. Learned Special Judge-II, Kullu, framed the Charge against accused-respondent on 20.04.2013, to which the respondent



-accused pleaded not guilty and rather claimed trial and pursuant to the trial, respondent-accused was acquitted by Learned Special Judge-II, Kullu on 09.03.2015 ***[referred to as Impugned Judgment, herein]***, for the offence under Section 20 of the NDPS Act by negating the case of prosecution.

**CONTENTION OF LEARNED COUNSEL FOR
THE APPELLANT-STATE:**

3. Learned State Counsel has contested the appeal, on the grounds, that the findings recorded by Learned Trial Court were wrong on facts as well as law. It is averred that impugned judgment is based on hypothetical reason, surmises and conjectures ; and Trial Court has appreciated the evidence in slipshod and perfunctory manner; Trial Court failed to view the prosecution evidence in its proper perspective and even the reasoning and conclusion arrived at is manifestly unreasonable and unsustainable as the reasoned and consistent testimony of PWs have been erroneously discarded by Learned Trial Court. It is averred that Learned Trial Court had gravely erred in not properly appreciating the deposition of prosecution witnesses,



PW-1 HC Rakesh Kumar, PW-2 ASI Jagjit Singh, Investigating Officer, PW-7 DSP/SDPO Sanjeev Chauhan and PW-8 SHO Neel Chand, Police Station Manali. It is further averred that the Learned Trial Court had erroneously treated PW-7 SDPO Sanjeev Chauhan, as Gazetted Officer and therefore, the findings regarding non-compliance of Section 50 of the Act are wrong and against the law, when, 354 grams of Cannabis /Charas was recovered from the shoes of accused and thus the acquittal is contrary to the facts and law and the impugned judgment may be quashed and set-aside.

**CONTENTION OF LEARNED COUNSEL FOR
RESPONDENT-ACCUSED:**

4. Per contra, Learned Counsel for respondent -accused has supported the Impugned Judgment passed by Learned Special Judge on 09.03.2015. It was contented that the alleged contraband was recovered, upon personal search of the body of the respondent-accused but the personal search conducted by the police by giving multiple options [whereby, PW 2-Investigating Officer gave the *first option* for personal search before the Gazetted



Officer or the Magistrate and after taking the respondent accused to Gazetted Officer [PW-7], the aforesaid PW 7-SDPO Sanjeev Chauhan gave *second-fresh option* to the respondent-accused for personal search before for him [police] or before another Gazetted Officer and thus the giving of three or multiple options one after the other casts doubts about the veracity of the first or the subsequent option; and the giving of second-fresh option by PW-7 was not contemplated under the Act and *the provision of* Section 50 of the NDPS Act and the mandate of law, confers power and authority on an “empowered officer or authorized officer” to disclose about the availability of legal right to an accused for personal search before either of the ‘two designated officers” and such power cannot be exercised afresh or time and again by the Gazetted Officer in defiance of Section 50 of the NDPS Act and non-compliance vitiates the consent and renders the search as well as the recovery inadmissible in evidence. Besides this, the non-association of independent witness; and the doubt spelt out by prosecution witnesses about the alleged



spot; and the non-examination of the key official PWs, namely Narayan Chand and Lal Singh; and even a perusal of photographs Ext.P-6 to Ext.P-8 shatters the prosecution case regarding the search and recovery allegedly made in presence of PW-8 [SHO] and on directions of PW-7 [Gazetted Officer] and others by PW-2 ASI Jagjit Singh IO and others; and version of PW-2 ASI Jagjit Singh IO that he had entered the name of the respondent-accused in NCB Form Ex. PW-2/A is belied from the evidence on record; and other glaring inconsistencies and contradictions going to the root of the matter shatter the prosecution case; and the conclusion arrived at and the view taken by Learned Trial Court after appreciating the evidence on record, being the only plausible and reasonable conclusion may not be interfered with and therefore, the Impugned Judgement passed by Learned Trial Court acquitting the Respondent-Accused on 09.03.2015, may kindly be upheld.

5. Heard Mr. I.N. Mehta, Learned Senior Additional Advocate General; and Mr. Bhupinder Ahuja, Learned Counsel for the respondent-accused.



6. Before analyzing the rival contentions, it is necessary to have a recap of the statutory provisions of Section 50 of the NDPS Act and the mandate of law declared by the Hon'ble Supreme Court, outlining the statutory compliances in cases relating to offences under the NDPS Act, requiring the personal search of an accused and the effect of non-compliance thereof.

STATUTORY PROVISION OF SECTION 50 OF THE NDPS ACT:

6(i). For appreciating the issue, Section 50 of NDPS Act, reads as under:

“50. Conditions under which search of persons shall be conducted:

- (1) When any officer duly authorized under section 42 **is about to search any person** under the provisions of section 41, section 42 or section 43, **he shall, if such person so requires, take such person** without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
- (2) **If such requisition is made,** the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate **referred to in sub-section (1).**



- (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person **but otherwise shall direct that search be made.**
- (4) No female shall be searched by anyone excepting a female.
- (5) When an officer duly authorized under section 42 **has reason to believe** that it is **not possible to take** the person to be searched to the nearest Gazetted Officer or Magistrate **without the possibility of the person to be searched parting with possession** of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, **instead of taking such person** to the nearest Gazetted Officer or Magistrate, **proceed to search** the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) After a search is conducted under sub-section (5), the officer shall **record the reasons for such belief** which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

**MANDATE OF LAW ON STATUTORY COMPLIANCES
IN SECTION 50 OF NDPS ACT AND EFFECT OF
NON-COMPLIANCE:**



6(ii). While dealing with the issue as to what are the statutory compliances stipulated in Section 50 of NDPS Act and what would be the effect of its non-compliance, has been answered by the Constitutional Bench of the Hon'ble Supreme Court in the case of ***State of Punjab versus Baldev Singh, (1999) 6 SCC 172***, mandating that it is **imperative on the Investigation Officer {i.e. empowered officer /authorized officer}** to disclose the availability of a right to an accused to be searched before nearest Gazetted Officer or nearest Magistrate and omission of the Investigating Officer to conduct the personal search before the nearest Gazetted Officer or nearest Magistrate, would cause inherent prejudice to an accused and 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 illicit article, recovered during a search conducted in violation of Section 50 of NDPS Act and effect of non-compliance shall render the incriminating material inadmissible in evidence and the same cannot be relied upon to



hold the accused guilty, in case, the same was the only material found to be in unlawful possession of any contraband, *in following terms:*

“32. However, the question whether the provisions of Section 50 are mandatory or directory and if mandatory to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, ***we hold that the provisions of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty on the Investigating Officer (empowered officer)*** to ensure that search of the concerned person (suspect) is conducted in the manner prescribed by Section 50, ***by intimating to the concerned person about the existence of his right, that if he so requires, he shall be searched before a Gazetted Officer or a Magistrate and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, would cause prejudice to an accused and 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 during a search conducted in violation of the provisions of Section 50 of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable. ***The protection provided in the section*** to an accused to be intimated that he has the right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires, ***is sacrosanct and infeasible it cannot be disregarded by the prosecution except at its own peril.***

33. The question whether or not the safeguards provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safeguards provided in that section were



complied with, it would not be advisable to cut short a criminal trial.

55. We, therefore, ***hold that*** an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Act, cannot by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused. Any other material/article recovered during that search may, however, be relied upon by the prosecution in other/independent proceedings against an accused notwithstanding the recovery of that material during an illegal search and its admissibility would depend upon the relevancy of that material and the facts and circumstances of that case.”

6(iii). While dealing with effect of non-compliance of Section 50 of NDPS Act, the Constitutional Bench of the Hon’ble Supreme Court in **Vijaysinh Chandubha Jadega versus State of Gujrat, (2011) 1 SCC 609**, held that it is mandatory that the accused is made aware of existence of right to be searched before a Gazetted Officer or Magistrate (orally or in writing) but failure to inform the suspect of such a right would cause prejudice to him an accused and the non-compliance will render recovery of illicit article



suspect and vitiate the conviction and sentence of an accused. The safeguards provided in Section 50 have been introduced so as to check misuse of power and to prevent the innocent persons of being implicated by planting false cases. The obligation of authorized officer, including police officer to comply with Section 50 is mandatory and requires strict compliance, so as to impart authenticity, transparency and creditworthiness to the entire proceedings and to add legitimacy to the search proceedings, *in the following terms :-*

24. 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.

29. 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 minimize 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 authorized 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.

**MANDATE OF LAW-GIVING OF THIRD OPTION
FOR PERSONAL SEARCH VITIATES RECOVERY:**

7. While dealing with the obligation of an empowered or authorized persons, including the police officer, any such officer is under a legal obligation “to inform or disclose” the accused of his right for personal search before the nearest Gazetted Officer or the nearest Magistrate under Section 50 of NDPS Act, in terms of the mandate of the Hon’ble Supreme Court in the case of **Suresh and others versus State of Madhya Pradesh, (2013) 1 SCC 550**, that merely asking an accused to give his consent for personal search either before a police officer or a Gazetted Officer or



Magistrate does not conform to the safeguards stipulated under Section 50 of the Act; and such non-compliance shall render the alleged recovery of contraband suspect, which cannot form basis for conviction of an accused, *in the following terms:-*

- “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 Chandubha 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* and *Prabha Shankar Dubey* 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.”

7(i). While upholding the acquittal, where an offer was made by an authorized officer including a police officer, requiring or asking an accused for personal search by the police party, in addition to the Gazetted Officer or Magistrate, the Hon’ble Supreme Court has held in ***State of Rajasthan v. Parmanand and another, (2014) 5 SCC 345***, that giving third option or third alternative for personal search before an Investigating Officer or a member of raiding party or the police on the spot, defeats and frustrates the protection granted to an accused for being searched before an independent officer breaches Section 50 of the NDPS Act, when, the statutory provision expressly contemplates for personal search before either of the named persons i.e. the nearest Gazetted Officer or nearest Magistrate only, *in the following terms:-*

“16. It is now necessary to examine whether in this case, Section 50 of the NDPS



Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest Gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. **A common notice was given** on which only respondent No.2-Surajmal is stated to have signed for himself and for respondent No.1 -Parmanand. Respondent No.1 Parmanand did not sign.

19. We also notice that **PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S.Negi, the Superintendent, who was a part of the raiding party.** It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S.Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. **The idea behind**



taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, ***is to give him a chance of being searched in the presence of an independent officer.*** Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a ***third alternative*** was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. ***But PW-10 SI Qureshi could not have given a third option*** to the respondents when Section 50(1) of the NDPS Act does not provide for it and ***when such option would frustrate the provisions of Section 50(1) of the NDPS Act.*** On this ground also, in our opinion, the ***search conducted by PW-10 SI Qureshi is vitiated.*** We have, therefore, no hesitation in concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The **conviction of the respondents was therefore, illegal.**



7(ii). While dealing with the validity of the third option or alternative for personal search of an accused before a police officer *and* exercise of discretion by the Investigating Officer whether to take an accused for personal search before the nearest Magistrate or Gazetted Officer who has to be independent *and* the mandate that the efforts should be made to take the accused before the nearest magistrate *and* by outlining that the non-compliance of Section 50 of the NDPS Act vitiates the search and renders the recovery inadmissible in evidence with the consequence that inadmissible recovery shall vitiate the trial to that extent, in terms of the mandate of the Hon'ble Supreme Court in the case of ***Ranjan Kumar Chadha vs State of Himachal Pradesh, 2023 SCC Online SC 1262,*** *in the following terms:-*

“25. What is pertinent to note in the oral evidence of PW 12 and PW 14 respectively referred to above, is that the ***appellant herein was told or rather informed*** that if he so desired, ***he may get himself searched before the ASI or before the Gazetted Officer or Magistrate.*** Thus, it is evident from the oral evidence of



both PW 12 and PW 14 that **three options were given to the appellant** herein-**first** to be searched before the ASI i.e. Assistant Sub-Inspector, **second**, before the Gazetted Officer and **third**, before any Magistrate. It is also pertinent to note that the appellant was not informed in so many words that it is his right under Section 50 of the NDPS Act to seek search before a Gazetted Officer or Magistrate.

27. We have no hesitation in recording a finding that **Section 50 of the NDPS Act was not complied with as the appellant could not have been offered the third option of search to be conducted before the ASI.** Section 50 of the NDPS Act only talks about a Gazetted Officer or Magistrate. **What is the legal effect** if an accused of the offence under the NDPS Act is being told, whether he would like to be **searched before a police officer or a Gazetted Officer or Magistrate**?
29. Thus, from the oral evidence on record as discussed above it is evident that **Section 50 of the NDPS Act stood violated for giving a third option of being searched before a police officer.**
49. As to **what would be the consequences** of a recovery made in violation of



Section 50, it was observed in *Baldev Singh* (supra) that it would have the effect of rendering such incriminating material inadmissible in evidence and hence, cannot be relied upon to hold the accused guilty for being found to be in unlawful possession of any contraband. The Court further held that it would not impede the prosecution from relying upon recovery of any other incriminating article in any other independent proceedings. It was further held that the burden of proving that the conditions of Section 50 were complied with, would lie upon the prosecution to establish...

51. Thus, the Constitutional Bench in express terms laid down that although the non-compliance of Section 50 may not vitiate the trial yet **would render the recovery of the contraband doubtful and may vitiate the conviction of the accused.** The emphasis laid by the Court is on illicit articles seized from the “person of an accused” during the search conducted in violation of safeguards provided in Section 50 of the NDPS Act. In other words, according to *Baldev Singh* (supra), the **provisions of Section 50 will come into play only in the case of personal search** of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying.



66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarized as follows:

- (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.
- (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect **declines to exercise his right** of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.
- (iii) **Before conducting a search,** it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a



right of being searched by a
Gazetted Officer or Magistrate.

- (iv) While informing the right, ***only two options*** of either being searched in presence of a Gazetted Officer or Magistrate must be given, ***who also must be independent and in no way connected to the raiding party.***
- (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.
- (vi) Where the right under Section 50 has been exercised, ***it is the choice of the police officer to decide whether*** to take the suspect before a Gazetted Officer or Magistrate ***but an endeavor should be made to take him before the nearest Magistrate.***
- (vii) to (viii)not relevant...
- (x) *Any* incriminating *contraband*, possession of which is punishable under the NDPS Act and ***recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial*** by the prosecution, however, it will



not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”

7(iii). The principle of law declared in the case of **Ranjan Kumar Chadha** (*supra*), stands reiterated by the Hon’ble Supreme Court in the case of **State of Himachal Pradesh vs Surat Singh** [*Criminal Appeal No.96 of 2018*, **2026 SCC Online SC 376**, mandating that the third option or third alternative given by Investigating Officer to an accused for his personal search before a Police Officer in addition to the option for personal search before a Gazetted Officer or a Magistrate, in total departure from the express mandate of Section 50 of the NDPS Act vitiates the consent and renders the recovery inadmissible in evidence so as to vitiate the trial, in the *following terms*:-

17. The High Court vide its judgement dated 08.10.2015 acquitted the respondent-accused while observing as under:

17. “The accused was apprehended on 13.03.2013 while carrying a bag. However, despite that his personal search was carried out. The police has **given option** to the accused either



to be personally searched before the Magistrate or the Gazetted Police Officer. **The accused was also given option whether he wanted to be searched by the I.O.** in the presence of witnesses mentioned in Ext. PW-1/A. According to Section 50 of the ND & PS Act, the accused has to be apprised of his legal right to be searched either before the Magistrate or the Gazetted Officer. **There is no third option to be searched before the Police Officer.** Thus, the consent obtained from the accused was not in conformity with Section 50 of the Act. It **has vitiated the entire trial.**

8. The oral testimony of the witnesses clearly established that the Investigating Officer took a departure from the provisions of law and on the contrary committed an act which is clearly contrary to the provisions of law. It may not be out of place to state at the cost of repetition that the testimony of PW-8 reveals that there was no electronic weighing scale available in the shop and he was using only the traditional weighing scale as such the story of prosecution that an electronic weighing scale was used for weighing the contraband article charas falls flat on the face of it and the version of the prosecution and the story of the prosecution becomes doubtful and ultimately unacceptable.



The High Court was also justified in placing reliance on the judgment of this Court in [State of Rajasthan versus Parmanand and Anr](#), in support of the conclusions drawn by it.

19. Thus, in our opinion, the present ***appeal is devoid of merits*** and deserves to be dismissed. Accordingly, the same is hereby dismissed.

7(iv). While upholding the acquittal for non-compliance of Section 50 of the NDPS Act, the Division Bench of this Court, in the case of ***State of Himachal Pradesh versus Anil Kumar alias Rinku***, Criminal Appeal No 478 of 2015, decided on 25.3.2026, held as under:

“11. According to PW-2, police had left the Police Station at 2:20 P.M., whereas according to PW-9, police party left the Police Station at about 11:00 A.M. and reached Hanogi Mata at 12:00 noon. According to the challan presented in the Court as also stated in the ruqua, on the basis of which FIR has been registered, it has been stated that respondent was overpowered on the basis of suspicion of having stolen property with him, but at the same time it has been further stated that area was secluded and, therefore, independent witness was not available. Therefore, officials were associated as



witnesses and after giving jamatalashi by the police party to the said person, **consent of respondent was obtained**, as provided under Section 50 of NDPS Act and, thereafter, **personal search of the respondent was conducted.**

12. In the Court, PW-9 has stated that he asked the respondent as to whether he was having some NDPS substance and therefore, he wanted to search him, whereupon consent was given by the respondent and respondent was searched.
18. According to prosecution, contraband was recovered from the person of the respondent. Consent memo depicts that it was stated to the respondent by PW-9 that he had a doubt that respondent was having some narcotic drug, therefore, he intended to search the respondent and, thereafter, respondent was **asked to give consent** for search to some Magistrate or Gazetted Officer by stating that it was the right of the respondent under NDPS Act.
21. As per consent alleged to be given by the respondent, it has been stated that respondent had stated that he voluntarily wanted to give his search to the Investigating Officer.
23. In present case, respondent did not decline to exercise his right, **rather his consent has been recorded for**



giving search to the Investigating Officer. As per mandate of the Apex Court that only **two options are to be given** to the respondent and **any third option will vitiate the proceedings.**

In present case, there is nothing on record in writing that respondent declined to exercise his right, **rather a third option appears to have been given**, as evident from the consent alleged to have been recorded in the consent memo. The memo is not in consonance with the requirement envisaged by Section 50 of NDPS Act, as summarized in **Ranjan Kumar Chaddha's case** and therefore also, the trial vitiates.

25. In view of above discussion, we are of the considered opinion that respondent deserves benefit of doubt and we do not find any ground for interfering in the judgment of acquittal for the reasons stated here-in-above.”

7(v). Giving of third option or third alternative for personal search before police officer in addition to the option(s) for personal search either before the nearest Gazetted Officer or nearest Magistrate, establishes total non-compliance from the express mandate of Section 50 of the NDPS Act and this



departure frustrates the right of an accused for being searched before an independent officer under the Statute; in case of ***State of Himachal Pradesh vs Tara Chand, Criminal Appeal No 406 of 2015***, decided on 06.04.2026.

7(vi). Contention of the appellant-State in giving third alternative or multiple options for personal search were held to be impermissible option and personal search conducted without making efforts for taking the accused before the nearest Gazetted Officer or nearest Magistrate revealed non-compliance of the express mandate of Section 50 of NDPS Act, so as to vitiate the recovery and the trial in terms of the mandate of this Court in the case of ***State of Himachal Pradesh versus Shashi Kant, Criminal Appeal No. 410 of 2015***, decided on 06.05.2026.

ANALYSIS:

8. Taking into account the entirety of facts and circumstances and the evidence on record and the statutory provisions of the NDPS Act and the principles enunciated by the Hon'ble Supreme Court and *in facts of instant case*, this Court is



of the considered view that the Impugned Judgment dated 09.03.2015, passed by Learned Special Judge acquitting the Respondent-Accused [Ram Lal], does *not warrant any interference in instant appeal*, for following reasons:

8(i). Prosecution story, as it unfolds, is that the police is alleged to have recovered the alleged contraband from both the shoes worn by respondent accused.

NON-COMPLIANCE OF SECTIONS 42 & 50 OF NDPS ACT:

8(ii). Since the alleged recovery was made from the body of the respondent-accused [i.e. the shoes] therefore, for appreciating the contention regarding Section 50 of NDPS Act, it is necessary to take note of the Option given to respondent-accused for personal search, **Ext. PW-1/A**, by the Investigating Officer PW-2 [ASI Jagjit Singh] and the Consent given by respondent-accused for personal search, as in Consent Memo, **Ex PW-1/B** given to the Investigating Officer [PW-2] read as under:

Ext. PW-1/A

(Translated version from Hindi)

“Case FIR No.22/2013, Dated 23.02.2013, under Section 20 NDPS Act, P.S. Manali.

**CONSENT MEMO UNDER SECTION 50 OF NDPS ACT.**

I **Assistant Sub Inspector, Jagjit Singh**, Police Station Manali, District Kullu, having visited at Village 16 Miles on 23.02.2013, in the presence of following witnesses, suspect you, **Shri Ram Lal S/o Shri Munshi Ram**, Caste xx VPO Thatrath, Police Station Pillukhera, District Mandi, Tehsil Safidon, District Jind, Haryana, aged 55 years, to have kept some narcotics / contraband on your body. As per your legal right, you are requested to inform orally and in writing, as to whether you want your personal search conducted either before any Magistrate or a Gazetted Officer.

Sd/-

I/O ASI Jagjit Singh,
Police Station Manali,
23.02.2013

Ram Lal, aforesaid informed that he does not know how to right the things. However, he knows how to write his signatures. He wants that search be made before Gazetted Officer.

Sd/-

Ram Lal

Ext.PW-1/B**Witness**

Sd/-

HC Narayan Chand
No.78, I.O. Police Station
Manali, District Kullu.

Witness

Sd/-

HC Rakesh Kumar No 35
IO Police Station, Manali, District Kullu.

8(iii). Rukka **Ext. PW-2/B** narrates the sequence of events that respondent-accused was suspected



to be possessing contraband and after nabbing the respondent-accused in rain shelter in village 16 miles, the Investigating Officer PW-2 ASI-IO Jagjit Singh, gave an option to the respondent-accused as to whether he wants his personal search to be conducted either before the Magistrate or a Gazetted Officer as per his legal right, on which, respondent-accused gave his consent vide **Ext PW-1/B** referred to as the **“first option”** that may he be searched before a Gazetted Officer.

Rukka Ext. PW-2/B and the deposition of key spot witness PW-1-HHC Rakesh Kumar and testimony of Investigating Officer-PW-1 states that the respondent-accused was taken to Police Station Manali on the directions of the Gazetted Officer, PW-7 SDPO Sanjeev Chauhan and they reached Police Station Manali accordingly at about 8:20 p.m. on 23.02.2013. Even, **PW-7 SDPO, Sanjeev Chauhan**, has deposed that he had directed the Investigating Officer, PW-2 ASI Jagjit Singh to bring respondent-accused to Police Station Manali.

Rukka further states that on reaching Police Station Manali, PW-7-SDPO Sanjeev Chauhan



interrogated the respondent-accused and then gave the “***second-fresh option***” by asking the accused as to whether he wants to be searched before him [police officer] or somebody else.

PRESENCE OF SHO-PW-8 AND OTHERS DURING PERSONAL SEARCH OF ACCUSED VITIATES THE SEARCH:

8(iv). Even, SHO of PS Manali, PW 8-Neel Chand, deposed that at about 8.20 pm, the police party brought the respondent-accused to PS Manali, the Gazetted Officer i.e. PW-7-SDPO orally informed the accused of his legal right to be searched before the Magistrate or a Gazetted Officer and on this, the accused expressed his desire to be searched before PW 7-SDPO Sanjeev Chauhan and thereafter **accused was searched by Investigating Officer [PW-2] in the presence of PW-7 SDPO [Sanjeev Chauhan, Gazetted Officer] and in the presence of SHO Police Station Manali PW-8 Neel Chand and others.**

DISCLOSURE OF LEGAL RIGHT OF OPTION FOR PERSONAL SEARCH VESTS IN EMPOWERED-AUTHORISED OFFICER:

8(v). Section 42 and 50 of NDPS Act mandates that the “empowered-authorized officer”, who is the



Investigating Officer is under obligation to disclose the availability of a legal right to an accused, as to whether he wants his personal search to be conducted before the nearest Magistrate or the nearest Gazetted Officer.

ONCE OPTION EXERCISED BY ACCUSED THEN SECOND OR FRESH OPTION BY SAME OR ANOTHER OFFICER -IMPERMISSIBLE:

8(vi). Once the respondent-accused had given his option-consent *referred to as the “first option”* to the empowered-authorized officer i.e. Investigating Officer PW 2 Jagjit Singh on the spot vide Consent Memo Ext. PW-1/A, for personal search before the Gazetted Officer then, the aforesaid Gazetted Officer-PW 7 SDPO Sanjeev Chauhan, did not have any authority to ask for the **“second-fresh option”** from the respondent-accused for personal **search before him** [police officer] or somebody else or another Gazetted Officer.

In aforesaid circumstances, once Section 50 of NDPS Act authorizes an “empowered-authorized officer i.e. Investigating Officer” to give an option to an accused for personal search by “recognizing giving of two options” and that too before “either



of the two designated officers”, before the nearest Magistrate or nearest Gazetted Officer” and the Statute does not recognize the giving of “third alternative or fresh option by the same authorized -empowered person [Investigating Officer] and/or by any other officer or by the Gazetted Officer before whom personal search is to be conducted. Giving an “impermissible option” by an authorized -empowered officer-Investigating Officer and/or that too by an unauthorized persons [Gazetted Officer-PW-7-SDPO Sanjeev Chauhan, in this case] and the personal search conducted in the presence of SHO-PW-8 Neel Chand, who had no role in the matter establishes participation of interested person(s) in said search. Consequently, the search so conducted de hors the procedure recognized by the Statute vitiates the and the resultant seizure-recovery.

OVER-PERFORMANCE BY GAZETTED OFFICER BY ASSUMING FUNCTIONS OF EMPOWERED - AUTHORISED OFFICER-VITIATES ACTION:

8(vii). Mandate of Section 42 & 50 (1) & (2) read with Section 50 (3) of the NDPS Act provides that the authority for personal search is vested



in “authorized officers or authorized officers” [ASI of Police, in instant case] and such an authority was exercisable by the Investigating Officer-PW-2 by seeking an option from the respondent-accused. After exercise of option, the Investigating Officer in his own discretion, was to take the accused for personal search before the nearest Magistrate or the nearest Gazetted Officer. After taking/producing the respondent-accused before the Gazetted Officer for personal search, the Gazetted Officer had a limited role, as to whether reasonable grounds exist for conducting the personal search and only in case reasonable grounds exist, then such a Gazetted Officer was to “direct that the search be conducted in terms of Section 50 (3) of the Act. After being satisfied that reasonable grounds exist, the role of Gazetted Officer was to oversee that authenticity, transparency and creditworthiness was ensured while conducting personal search, so that rights of an accused were safeguarded and no accused was falsely framed in a case.

In the instant case, once the respondent -accused was taken and was produced before the



Gazetted Officer, PW-7-SDPO, Sanjeev Chauhan, then, aforesaid Gazetted Officer had no authority to assume the role, statutorily vested/ conferred on the empowered-authorized officer [IO concerned], by asking for and calling for a fresh option for personal search either before him or somebody else, makes such Gazetted officer an interested person, which was at variance or different from the first option. Once the Statute requires an act to be performed by “named-designated persons i.e. empowered-authorized officers” and that too in a “particular manner” [as spelt out in Section 42 read with Section 50 (1) (2) & (3) of NDPS Act] then, the over-performance by the Gazetted Officer [PW-7] in asking the respondent-accused to give the second-fresh option for personal search before him, is in derogation of the codified and established procedure recognized by the Statute and the law. In these circumstances, once veracity of option(s), is under cloud, therefore, the case of the prosecution turns out to be suspicious, incredible and doubtful and alleged seizure-recovery becomes inadmissible in evidence and the same cannot be



relied upon or used against the respondent-accused,
in instant case.

**FAILURE OF INVESTIGATING OFFICER TO
TAKE ACCUSED BEFORE NEAREST GAZETTED
OFFICER ESTABLISHES NON-COMPLIANCE OF
ACT:**

9. Section 50 of the Act casts an obligation on an empowered-authorized officer to take the respondent-accused, without unnecessary delay to the “nearest Magistrate or nearest Gazetted Officer of any of the Departments, mentioned in Section 42 of NDPS Act.”

Evidence on record reveals that respondent -accused was allegedly nabbed by the police from a rain shelter at Village 16 Miles. Perusal of the Rukka, Ext. PW-2/B reveals that the Police Station Manali was 12 Kilometers from village 16 miles. Investigating Officer, PW-2-ASI Jagjit Singh deposed that though the office of Fisheries Officer [Gazetted Officer] existed at Patlikuhal, which was at a distance of 4-5 kilometers from village 16 miles but he did not have the contact number of Fisheries Officer.



Evidence reveals that though a Gazetted Officer [Fisheries Officer] was available in Patlikuhal at a distance of 4-5 kilometers from alleged spot i.e. village 16 Miles, yet, no efforts were made by Investigating Officer, PW-2 ASI Jagjit Singh to contact the aforesaid Gazetted Officer-Fisheries Officer. Mere non-availability of the contact number of Fisheries Officer cannot be set-up as a plea by the prosecution, when, nothing has been placed on record to establish that the Investigating Officer PW-2 had made efforts to contact Fisheries Officer at Patlikuhal. Rather, evidence on record reveals a different story altogether, that Investigating Officer PW-2 took the respondent-accused to Manali, on the directions of Gazetted Officer, PW 7-SDPO Manali, despite the fact that Manali was located at a distant place i.e. 12 Kms from the spot whereas Patlikuhal was merely 4-5 Kms from the spot. In above circumstances, Section 50 (1) of the NDPS Act has been blatantly violated by the prosecution, in not making efforts for taking and producing the respondent-accused for personal search before the “nearest Gazetted Officer” i.e. Patlikuhal.



Thus, for non-compliance of mandatory provisions, the acquittal of the respondent-accused was validly ordered by Learned Trial Court, which is approved by this Court.

NO ENDEAVOUR MADE BY INVESTIGATING OFFICER TO TAKE THE ACCUSED TO NEAREST MAGISTRATE:

10. For conducting the personal search of an accused, the mandate of Section 50 (1) & (2) of NDPS Act and the judgement of the Honble Supreme Court in case of ***Ranjan Kumar Chadda (supra)*** [Paras 66 (i) (ii) & (vi)], has mandated that it is the choice of the empowered/authorized officer [Investigating Officer] to decide, whether to take the suspect before the nearest Magistrate or the nearest Gazetted Officer yet “an endeavor should be made to take him before the nearest Magistrate.

Evidence on record, Rukka Ext PW-2/B reveals that Investigating Officer, PW-2 ASI Jagjit Singh, took the respondent-accused to the Gazetted Officer, PW 7-SDPO Sanjeev Chauhan (at Manali) on his directions. Even PW-7 has testified that he directed Investigating Officer PW-2, to produce the respondent-accused before him in PS Manali



and the Investigating Officer PW-2 had followed the directives and directions of higher officer, i.e., the aforesaid Gazetted Officer-PW 7-SDPO. The action of Investigating Officer [PW-2] in abdicating his statutory discretion to the dictates of higher authorities-PW-7 vitiates the object of bringing authenticity, transparency and creditworthiness in proceedings. Even, failure to make an “endeavor to take respondent-accused before nearest Magistrate” is contrary to the mandate of the Hon’ble Supreme Court in the case of **Ranjan Kumar Chadda** (*supra*). In this backdrop, the prosecution case has turned out to be untrustworthy and the same was validly negated by Learned Trial Court, leading to the acquittal of respondent-accused.

NO EFFORT MADE TO ASSOCIATE INDEPENDENT WITNESSES:

11. Evidence indicates that on 23.02.2013, the police party reached village 16 Miles at about 7:40 p.m. During patrolling, the respondent-accused was suspected to carrying contraband and he was nabbed by the police. Investigation Officer PW-2 ASI Jagjit Singh, had deposed in cross-examination



that he had sent HHC Lal Singh No 134 [a member of patrolling party] to call/look for independent local witnesses.

Prosecution story falls to the ground, as the prosecution has not examined HHC Lal Singh and deposition of Investigating Officer PW-2, is belied by another spot witness, PW-1 [HC Rakesh Kumar], who has deposed in his cross-examination that no effort was made by the Investigating Officer [PW 2- ASI Jagjit Singh] to call or look for the local independent witnesses. Failure to make efforts for associating local/independent witnesses makes the prosecution story doubtful.

GIVING UP MATERIAL WITNESS FATAL TO PROSECUTION CASE:

11(i). In terms of the GD Entry Ex PW 3/A, though HC Narayan Chand No 78 was member of the police patrolling party. Rukka Ex PW 2/B, states that the police party alongwith, HC Narayan Chand allegedly found the respondent-accused in a rain shelter in village 16 miles on 23.02.2013 at about 7.40 pm. The aforesaid HC Narayan Chand was a key witness to the option, Ex PW-1/A, given



by the Investigation Officer-PW-2 to the respondent-accused for personal search and the resultant consent, EXT PW 1/B, given by the accused for personal search and the recovery, Ex PW-1/E from respondent-accused.

Prosecution has chosen not to examine HHC Narayan Chand, despite being the key witness to the alleged incident, including the option-consent memo, the alleged personal search and recovery and arrest. Prosecution had given up the aforesaid witness on 14.07.2014 on the plea that his evidence would be repetitive, is dispelled in view of grave inherent contradictions and inconsistencies in the deposition of prosecution witnesses.

This Court is conscious of the fact though non-examination of an official witness cannot solely be a ground to negate or scuttle the prosecution story. However, after analyzing the evidence with greater degree of care, once the prosecution story has come out to be untrustworthy, incredible and doubtful, due to non-compliance of the statutory provisions and the fact that evidence on record is full of grave contradictions so as to distort



the prosecution case and even, the non-examination of key witnesses {HHC Lal Singh No 134 and HC Narayan Chand No 78} shatters the prosecution case, in view of the broader principles outlined by the Hon'ble Supreme Court, in case of **Mohammad Khalid and another vs State of Telangana (2024) 5 SCC 393** {Para 21} and a similar view has been taken in the case of **Nadeem Ahmed vs State of West Bengal, 2025 SCC Online 1779** {Para 28 (d)}, the Impugned judgement of acquittal, does no warrant any interference.

SPOT WHERE RESPONDENT-ACCUSED NABBED NOT ESTABLISHED:

12. PW-7 SDPO Sanjeev Chauhan, deposed in his cross-examination that there is no rain shelter in village 16 Miles. Even, PW-1 HC Rakesh Kumar deposed that he does not know if rain shelter is situated in village 16 Miles. HC Narayan Chand and HHC Lal Singh who were members of patrolling party have not been examined by the prosecution. Once, the rain shelter in village 16 miles, from where the respondent-accused was allegedly nabbed by the police party is under cloud



then, the proceedings turn out to be untrustworthy and incredible and Learned Trial Court had rightly acquitted the respondent-accused.

PHOTOGRAPHS OF ALLEGED RECOVERY MAKE PROSECUTION STORY DOUBTFUL:

13. Prosecution witnesses, PW-1 HC Rakesh Kumar deposed that the Investigating Officer PW-2 ASI Jagjit Singh, took photographs of case property and weighing machine inside Police Station Manali whereas the Investigating Officer PW-2 ASI Jagjit Singh, deposed in his cross-examination that the photographs were taken in office of SHO Police Station Manali, wherein, Gazetted Officer [PW-7-DSP -SDPO Sanjeev Chauhan], his table, case property and the accused are shown.

Version of the above PWs reveal glaring inconsistencies, as the photographs on record i.e. Ext. P-6 to Ext. P-8, negate the very testimony of Investigating Officer PW-2 ASI Jagjit Singh, for the reason, that firstly, these photographs do not show the presence of Gazetted Officer [PW-7-SDPO] and neither his table nor the respondent-accused therein; and secondly, though as per NCB Form,



Ex PW 2/A, the alleged recovery has been shown to have been made on 23.02.2013 at about 8:45 p.m. in Police Station Manali whereas perusal of the photographs Ext.P-7 and Ext.P-8, shows the respondent-accused to be present in broad day light. This material aspect, belies and negates the prosecution story and makes the search and seizure -recovery doubtful.

VERSION OF PWs THAT NAME OF RESPONDENT-ACCUSED ENTERED IN NCB FORM, EXT.PW-2/A, NEGATED:

14. PW-2 ASI Jagjit Singh, Investigating Officer testified that he filled the NCB Form Ext. PW-2/A in which he entered the name of the respondent -accused.

Above deposition makes the prosecution story incredible, *for the reason*, that a perusal of NCB Form Ext. PW-2/A indicates that there is neither any column so as to indicate the name of accused nor did the name of respondent-accused figure in said form. Even testimony of PW-7 SDPO Sanjeev Chauhan that there is a column in NCB Form, showing name of offender is belied when, no such details are required or inserted in NCB



Form Ext. PW-2/A, so far as it relates to the respondent-accused in instant case.

15. Per contra, Learned Counsel for respondent-accused has supported the Impugned Judgement of acquittal.

Having regard to the quality of evidence as a whole and in particular the non-compliance of the Statute and in view of the declaration of law by the Honble Supreme Court, as discussed above; the Impugned Judgment does not warrant any interference, *for the reason*, that firstly, the non-compliance of Section 50 of the NDPS Act is apparent in instant case; and secondly, mandate of Section 50 (1) and (2) of the Act casts an obligation on the empowered-authorized officer [including an investigating officer] to disclose the availability of a legal right to an accused for personal search before either of the “two designated officers i.e. the nearest Gazetted Officer or nearest Magistrate” and based on such an option, the Investigation Officer [empowered-authorized officer] is to proceed further in the matter; and thirdly, in terms of Section 50 (1) & (2) of the Act,



once the Investigating Officer [PW-2, Jagjit Singh] had called an option from the accused [Ex PW-1/A] for personal search before Magistrate or Gazetted Officer and the accused had exercised his option, consenting for personal search before the Gazetted Officer, then, after taking the accused to Gazetted Officer, the aforesaid Gazetted Officer [PW-7] had no authority to ask the accused to exercise the second-fresh option for personal search before him [police-PW-7] or someone else ; and fourthly, the action of the Gazetted Officer in asking for the second-fresh option for personal search before the police, amounts to giving/inviting an “*impermissible option*” from the respondent-accused which is not recognized by the Statute ; and fifthly, the action of the Gazetted Officer in calling for fresh option from the respondent accused *amounts to carving out a new procedure in derogation of the established procedure* prescribed under the Act and the law and that too by assuming the power/authority, which is statutorily conferred/vested on Investigating Officer [PW-2] or the empowered-authorized officers under the Act and the law; and sixthly, even the



evidence on record, including Rukka, Ex PW-2/B and the deposition of the Investigating Officer [PW-2 Jagjit Singh, ASI] reveal that the Gazetted Officer [PW-7] had directed Investigating Officer to produce respondent-accused before him and even aforesaid Gazetted Officer [PW-7] admitted that he directed Investigating Officer to produce the respondent-accused before him, who asked for fresh option from the accused. In this context, the prosecution case has flawed on two counts, i.e. at first instance, the Gazetted Officer having given directions to Investigating Officer to produce the respondent-accused before him and after the production of accused and then in asking/giving the second-fresh-subsequent option for personal search to the accused {before him or someone else] which was not at all recognized by the Statute and action of the Gazetted Officer in assuming the authority and the role assigned to and meant for an Investigating Officer makes the Gazetted Officer “*an interested party*” besides the SHO-PW-8 Neel Chand, was also present during the personal search of the respondent-accused; and at the second



instance, even the failure of Investigating Officer to exercise his discretion whether to take the accused to the nearest Magistrate or the Gazetted Officer but in taking him to Gazetted Officer [PW-7] just to meet out or complying with the dictates of higher police authorities [PW-7] by abdicating the statutory discretion vested/conferred on him; is contrary to the law declared in case of **Ranjan Kumar Chadda [Para 66 (vi), supra]** ; and seventhly, the prosecution case is shattered due to non-compliance of Section 50 (3) of the Act, when, the role of Gazetted Officer was to oversee that authenticity, transparency and creditworthiness was ensured while conducting the personal search, so that rights of an accused were safeguarded and no accused was falsely framed in a case. Once the Statute requires an act to be performed by “empowered-authorized officers” and that too in a “particular manner” [as spelt out in Section 42 read with Section 50 (1) (2) & (3) of NDPS Act, as in this case] then, the over-performance of the Gazetted Officer [PW-7] in asking the respondent -accused herein, to give the second-fresh option



for personal search cannot sustain; and eighthly, nothing has been placed on record nor deposited by PWs that the Respondent-Accused [Ram Lal] had refused to undergo the personal search in response to the first or option called for and the resultant consent given by him Ex PW1/A and Ex PW-1B on the spot near the rain shelter in village 16 miles; and ninthly, non-association of the independent witness; and the doubt imported by the prosecution witnesses about alleged spot ; and non-examination of key official PWs, namely Narayan Chand and Lal Singh; and even a perusal of the photographs Ext.P-6 to Ext.P-8 shatter the personal search and the recovery alleged to have been made in presence of PW-7 and PW-8 by PW-2 ASI Jagjit Singh IO and others; and even the version of investigating Officer-PW-2 ASI Jagjit Singh, that he had written/entered the name of the respondent-accused in NCB Form Ex.PW-2/A is belied from the evidence on record; and failure of the prosecution to explain as to why the respondent-accused was not taken to the nearest Gazetted Officer and what efforts were made for



contacting to nearest gazetted officer at Patlikuhal, which was about 4-5 Kms from the spot i.e. village 16 miles but in taking the accused to a distance of 12 Kms to Manali, and that too on the dictates and directions of the Gazetted Officer, being a higher up in the police department; and tenthly, the procedure followed by the Gazetted Officer dehors the statute and that too by deviating from established procedure codified in Section 50 of the NDPS Act certainly defeats and frustrates the protections and safeguards available to the respondent-accused; and lastly, even the glaring inconsistencies and contradictions and infraction of the statutory provisions, negate the prosecution case, in view of the trite that “graver the offence, stricter is the proof is the foundational rule in criminal jurisprudence” but this rule has been thrown to winds in instant case.

**PLAUSIBLE AND REASONABLE VIEW CANNOT BE
SUBSTITUTED IN APPEAL ON UNTNABLE PLEAS:**

16. Based on the evidence on record, the view taken by the Learned Trial Court is equally plausible and convincingly reasonable, which cannot



be casually substituted while exercising appellate jurisdiction, in terms of mandate of the Hon'ble Supreme Court in case of **Khekh Ram vs State of Himachal Pradesh, 2018 (1) SCC 202** [Para 25, 33 & 34] coupled with the glaring inconsistencies and contradictions going to the root of the matter, and, makes the prosecution case highly incredible, untrustworthy and doubtful.

17. Based on the entirety of facts and circumstances and the evidence on record and the mandate of law as discussed above, and in facts on instant case, the Impugned Judgment dated 09.03.2015, passed by the Learned Special Judge, acquitting Respondent-accused after due appreciation of evidence and the law, does not suffer from any illegality or infirmity. Accordingly, the Impugned Judgment does not warrant any interference by this Court.

DIRECTIONS:

18. In view of above discussion and for the reasons recorded hereinabove, the instant appeal is **dismissed**, *in following terms:*



- (i) ***Criminal Appeal*** No 409 of 2015, State of Himachal Pradesh vs Ram Lal, ***is dismissed***;
- (ii) Impugned Judgment passed by the Learned Special Judge on 09.03.2015 in Sessions Trial No 24 of 2014 (2013) by Learned Special Judge, Kullu [HP], ***is upheld*** ;
- (iii) Acquittal of respondent-accused is affirmed;

In the aforesaid terms, the instant appeal and all pending miscellaneous application(s), if any, shall accordingly stand disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

July 23, 2026

[Shivender]