



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

Criminal Appeal No: 410 of 2015

Reserved on: 25.04.2026.

Pronounced on :06.05.2026.

State of Himachal PradeshAppellant

versus

Shashi KantRespondent

Coram:

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?*

For the appellant: Mr. Sushant Keprate, Additional
Advocate General.

For the respondent: Mr. Kanwar Bhupinder Singh,
Advocate.

Ranjan Sharma, Judge

State of Himachal Pradesh, being the appellant, has come up in the instant appeal, under Section 378 of the Code of Criminal Procedure, assailing the judgment dated 18.12.2014, passed by Learned Special Judge, Shimla [HP], in *Sessions Trial No.11-S/7 of 2011*, titled *State of Himachal Pradesh v. Shashi Kant*, acquitting the Respondent-accused herein, from the charge under Section 20 Narcotic Drugs and Psychotropic Substances Act, 1985 [**referred to as 'NDPS Act' herein**], alleging

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



recovery of 150 grams of *Cannabis-Charas* from his conscious and exclusive possession on 22.10.2010 at about 03:30 p.m.

PROSECUTION STORY:

2. The prosecution story is that on 22.10.2010, ASI Madan Lal, Investing Officer, Police Post Sanjauli along with Head Constable Ramesh Chand No.136, HC Surinder No.98, Constable Anoop No.499, HHC Ramesh Chand No.1403 and Constable Jyoti Lal No.904 were on patrolling duty and while they were present near Military Gate at about 03:30 p.m. on 22.10.2010, they noticed a person [Respondent herein], aged 23-24 years near an under construction building. On noticing the police, the said person was hiding behind a pillar by putting his hands in his rear pocket. Based on his activities, suspicion arose in mind of Investigating Officer, ASI Madan Lal that he might be having some objectionable material/contraband in his possession. The aforesaid person was nabbed by the police. Two independent witnesses, namely, Chaman Sharma and Hemant were associated. On inquiry, the accused disclosed



his name as Shashi Kant [Respondent herein].

Thereafter, the consent of the accused was obtained for personal search before the police and as per the option given, the personal search of accused was conducted, wherein, the police found a polythene envelope from his trousers/jeans. On opening the polythene envelope, a black substance in the shape of balls as well as sticks was found, which on smelling and testing, was found to be *Cannabis-Charas*. The contraband was weighed and found to be 150 grams. Proceedings of seizure-recovery were photographed and contraband was sealed in presence of witnesses. Thereafter, a Rukka was sent to the police station, which led to the registration of FIR No. 187 of 2010. Pursuant to the registration of FIR, the Respondent-Shashi Kant was arrested. After completing all codal formalities, the seized contraband was sent to Forensic Science Laboratory, Junga. Investigation was completed and the Challan was filed in the Court, which led to commencement of the trial.



2(i). Pursuant to the trial conducted by Learned Special Judge, Shimla, Respondent-Accused [Shashi Kant] was acquitted on 18.12.2014 **[referred to as the ‘Impugned Judgement’]**, with the findings that once the contraband was recovered from the trousers /jeans of the respondent-accused during personal search and the personal search was conducted the police by giving option(s) for personal search before Police or Gazetted Officer or a Magistrate revealed non-compliance of Section 50 of the NDPS Act, when, the statute contemplates that the personal search is to be conducted either before a nearest Gazetted Officer or a nearest Magistrate. It was held that option given for personal search before the police, who were the member(s) of raiding party, frustrates the provision of Section 50 of the NDPS Act. It was further held that no endeavor was made by the police to take the respondent-accused before the nearest Gazetted Officer or nearest Magistrate, and such non-compliance was violative of Section 50 of the NDPS Act. In this backdrop, Respondent



-accused was acquitted of the charges framed under Section 20 of the NDPS Act.

CONTENTION OF LEARNED COUNSEL FOR THE APPELLANT-STATE:

3. Learned State Counsel has contested the appeal on the ground that Learned Trial Court was wrong on facts as well as law and the Impugned Judgment is based on conjectures and surmises. It is averred that Learned Trial Court has appreciated the evidence in a slipshod and perfunctory manner and Learned Trial Court has failed to evaluate the prosecution evidence in its true perspective and the reasoning given by Learned Trial Court is manifestly unreasonable and unsustainable; and material-evidence on record has been disregarded by Learned Trial Court. It is averred that findings recorded by Learned Trial Court regarding non-compliance of Section 50 of the NDPS Act were unsustainable, *on the ground*, that perusal of the consent memo for personal search, Ext.PW-7/A, reveals that the Respondent-accused was apprised about his right to be searched either before a Magistrate or a Gazetted Officer and the Respondent-



accused has given the consent for personal search before the police present on spot, and therefore, the findings recorded by Learned Trial Court regarding non-compliance of provisions of Section 50 of the NDPS are unsustainable and the Impugned Judgment deserves to be set aside.

CONTENTION OF LEARNED COUNSEL FOR RESPONDENT-ACCUSED:

4. Per contra, Learned Counsel for Respondent -Accused has supported the Impugned Judgment dated 16.03.2015, asserting that alleged contraband was recovered, upon personal search of the body of the Respondent-Accused but the personal search conducted by giving the third option for personal search before the police on the spot reveals non-compliance of Section 50 of NDPS Act, rendering consent and consequential recovery inadmissible in evidence.

5. Heard, Mr. Sushant Keprate, Learned Additional Advocate General for the Appellant-State and Mr. Kanwar Bhupinder Singh, Learned Counsel, for the Respondent-Accused.



6. Before analyzing the rival contentions, this Court, feels it appropriate to have a recap of the Statutory provisions of Section 50 of the NDPS Act and the mandate of law of the Hon'ble Supreme Court, outlining the statutory compliances in case of personal search of the body of an accused under Section 50 of the NDPS Act and effect of its non-compliance.

STATUTORY PROVISION OF SECTION 50 OF THE NDPS ACT:

6(i). For appreciating the issue, Section 50 of the 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 subsection (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 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 Investigation Officer to disclose the availability of a right to the accused to be searched* before the nearest Gazetted Officer or nearest Magistrate and the omission of the Investigating Officer to conduct the personal search before 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 the effect of the non-compliance of Section 50 shall render the incriminating material allegedly recovered as inadmissible in evidence and the same cannot be relied upon to hold the accused



guilty for being found to be in unlawful possession

of any contraband, *in the 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 in Section 50 have been introduced so as to check misuse of power and to prevent innocent persons being implicated by plating false cases. The obligation of the 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 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 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.

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

7. While dealing with the obligation of the authorized persons, including the police officer is “to inform or disclose” the accused of his right for personal search before a Gazetted Officer or the nearest Magistrate under Section 50 of the NDPS Act, the Hon’ble Supreme Court in ***Suresh and others versus State of Madhya Pradesh, (2013) 1 SCC 550***, mandated 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 of 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 personal search before either of the two named persons i.e. the nearest Gazetted Officer or the 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 issue regarding the validity of third option-alternative for personal search of an accused before a police officer, the Hon'ble Supreme Court has answered the issue in the negative, in case of ***Ranjan Kumar Chadha versus State of Himachal Pradesh, 2023 SCC Online SC 1262***, mandating that Section 50 of NDPS Act, contemplates for giving an option for personal search before a Gazetted Officer or a Magistrate and *it is improper for police to ask an accused to exercise third alternative-option* for his search before a police officer, *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 summarised 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) to (ix)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 case of **Ranjan Kumar Chadha** (*supra*), has been reiterated by the Hon’ble Supreme Court in the case of **State of Himachal Pradesh v. Surat Singh** [*Criminal Appeal No.96 of 2018*, decided on 16.03.2026, **2026 SCC Online SC 376**, mandating that the third option given by the Investigating Officer for 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 NDPS Act, vitiates the



consent ; and renders alleged recovery inadmissible in evidence ; and vitiates 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.**

18. 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 in a similar fact-situation for non-compliance of Section 50 of NDPS Act, the Division Bench of this Court in ***State of Himachal Pradesh v. 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 third option for personal search before a 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 authority as mandated by the Statute ; in the case of **State of Himachal Pradesh v. Tara Chand, Criminal Appeal No.406 of 2015**, decided on 06.04.2026.

ANALYSIS:

8. Taking into account the entirety of facts and circumstances and the evidence on record and the statutory provisions of Section 50 of the NDPS



Act and the principles enunciated by the Hon'ble Supreme Court ; this Court is of the considered view that the Impugned Judgment dated 18.12.2014 acquitting the Respondent-Accused [Shashi Kant] does not warrant any interference in instant appeal for the following reasons:-

8(i). For purpose of appreciating the matter, it is necessary to take note of the Consent Memo for Personal Search, **Ext.PW-7/A**, given by PW-11 [ASI Madan Lal, Investigating Officer] to Respondent-Accused, under Section 50 of the NDPS Act, reads as under:-

“Case FIR No.187/2010, Dated 28.10.2010, under Section 20-61-85 of NDPS Act, P.S. Dhalli, Shimla.

CONSENT MEMO UNDER SECTION 50 OF NDPS ACT.

I **Assistant Sub Inspector, Madal Lal**, posted at Police Post Sanjauli, District Shimla, you Shashi Kant, S/o Shri Dharam Pal, R/o VPO Bhareri, Tehsil Bhoranj, District Hamirpur, presently, HM student in Sanjauli, aged 24 years is suspected to possess Narcotic Drugs and Psychotropic Substances or Charas, for **which it is necessary to conduct your personal search** either before a Magistrate, Gazetted Police Officer, as per your right or **from the undersigned in the presence** of the following witnesses:



You may inform the undersigned as to from whom you intend to go for personal search.

Sd/-

I/O ASI Madan Lal,
Police Post Sanjauli,
22.10.2010

Witness

Sd/-

Hemant Sharma S/o
Shri Rikhi Ram, R/o
Rikhi Niwas, near
Kaushik Building
Dingudhar, Sanjauli,
District Shimla.

Witness

Sd/-

Chaman Sharma, S/o Shri
Balak Ram, R/o
Ramanand Bhawan,
Sanjauli, District Shimla.

**As informed I consent for personal search
by a police on the spot.**

Sd/-

Shashi Kant
22.10.2010"

8(i-a). Deposition of PW-11 [ASI Madan Lal, Investigating Officer] and PW-7 [Hemant Sharma] reveals that the third alternative-option for personal search was given to the accused and that too for personal search before the police member of the raiding party, establishes non-compliance of Section 50 of the NDPS Act, when, the **Statute expressly mandates for "two options for personal search"**. The Consent Memo, Ext.PW-7/A giving three options for personal search vitiates the consent and renders alleged recovery inadmissible in evidence and said



recovery cannot be relied upon or used against the respondent-accused to hold him guilty.

8(i-b). PW-7, Hemant Sharma, an independent witness, negates the prosecution story, who deposed that the police did not give any option to the accused for personal search in his presence. He deposed that when, he reached the spot, the police had already searched the accused, which renders prosecution case highly doubtful and incredible.

8(i-c). Even, non-examination of Chaman Sharma another independent witness, and the absence of any explanation for his non-examination creates doubt about the personal search as well as the seizure of contraband, in terms of the mandate of law declared by the Hon'ble Supreme Court in the case of **Mohammad Khalid and another vs State of Telangana (2024) 5 SCC 393** {Para 21} and similar view has been taken in **Nadeem Ahmed vs State of West Bengal, 2025 SCC Online 1779** {Para 28 (d)} renders the prosecution story incredible. Perusal of Seizure-Recovery Memo Ext PW-6/A, dated 22.10.2010, indicates that though PW-7 [Hemant



Sharma] and one Shri Chaman Sharma, were allegedly associated as independent witnesses, but prosecution has chosen not to examine Chaman Sharma. Non-examination of one of the independent witnesses creates serious doubt and renders the prosecution story untrustworthy, for the reason, that prosecution story is that alleged contraband was allegedly recovered from the Respondent-Accused in presence of PW-7 [Hemant Sharma] and Chaman Sharma.

9. Contention of Learned State Counsel that Respondent-Accused was given the three options for personal search before the police himself or the Gazetted Officer or the Magistrate and once the Respondent-Accused had opted for personal search before the police present on the spot, then, there is no violation of Section 50 of NDPS Act.

The above contention is misconceived, *for the reason* that ***firstly***, the provision of Section 50 of NDPS Act provides for personal search before either of the “two designated officers” i.e. before the nearest Gazetted Officer or nearest Magistrate



and “giving of third option-alternative” for personal search before a police officer” is not contemplated under Section 50 of the Act; and **secondly**, the action of giving “an impermissible option” i.e. third option, for being searched before the police, who is a member of the raiding party, is contrary to Section 50 of the Act; and **thirdly**, the express mandate of Section 50 of the Act, which provides for personal search of an accused before either of the two designated officers, i.e. “nearest Gazetted Officer or the nearest Magistrate” is imperative and mandatory; and **fourthly**, the mandatory compliance for conducting the personal search of an accused under Section 50 (1) cannot be deviated from or diluted nor given a go-bye by the police or other authorized officers, except in case, any of the eventualities or preconditions spelt out in Section 50 (5) & (6) of the NDPS Act existed; and **fifthly**, no such eventualities required under Section 50 (5) & (6) are borne out from the evidence on record necessitating the personal search by the authorities other than the “two designated officers in Section



50 (1) of the Act: and **sixthly**, Investigating Officer cannot require or ask an accused for giving his personal search in breach of the express mandate of Section 50 of the Act, as the intent and object of conducting personal search before either of the two designated officers i.e. “nearest Gazetted Officer or nearest Magistrate” is to ensure authenticity, transparency and creditworthiness in proceedings; and **seventhly**, even on facts of instant case, the Investigating Officer, PW-11 [ASI Madan Lal] gave three options for personal search, Ext.PW-7/A, to the accused for being searched before a Gazetted Officer or a Magistrate or before him [i.e. a police officer who was a member of the raiding party]; and **eighthly**, it is highly improper for Investigating Officer [PW-11, Madan Lal] to even ask the accused for being searched before a police officer, who was a member of raiding party; and **ninthly**, the action of Investigating Officer (PW-11, Madan Lal) in giving three options-alternatives for personal search and that too before a member of raiding party certainly defeats and frustrates the protection and safeguards



available to an accused for being searched before an independent designated officer either before the nearest [Gazetted Officer or the nearest Magistrate] in defiance of Section 50 of NDPS Act is illegal; and **tenthly**, nothing has been placed on record nor deposed by PWs that the Respondent-Accused [Shashi Kant] had refused for personal search before Gazetted Officer or the Magistrate; and **eleventhly**, nothing has been placed on record nor deposed by PW's that eventualities spelt out in Section 50(5) &(6) of NDPS Act existed revealing "reasons for not resorting to personal search before either of the two designated officers" i.e. nearest Gazetted Officer or the nearest Magistrate under Section 50(1) of the Act and absence of such eventualities and reasons in the Special Report [Ext.PW 3/A] sent by PW-11 [Madan Lal, Investigating Officer] to Additional Superintendent of Police, Shimla creates doubt about the alleged search; and **twelfthly**, even deposition of PW-11 [Madan Lal, IO] establishes that he had obtained and taken the consent of the Respondent-Accused, vide Consent Memo *Ext. PW-7/A* for personal



search by the police party on the spot, which is borne out from endorsement in red-circle marked as A to A, on the consent form *Ext.PW-7/A*. Even, PW-11 [ASI Madan Lal, IO] has deposed that he gave three options-alternatives to Respondent-Accused for personal search before the police present on the spot i.e. Investigating Officer himself or a or a Gazetted Officer or a Magistrate. Even the deposition of PW-1 [C, Anoop Kumar], PW-6 [ASI, Surinder Singh] and PW-9 [HC Ramesh Chand], who were members of raiding party suffer from grave infirmity and inherent contradictions, in view of the fact, that PW-1 has deposed that option for personal search before the Police or Magistrate ,whereas, PW-6 and PW-9 have deposed for personal search before Police or Gazette officer whereas PW-11 [ASI Madan Lal, Investigating Officer] states that he given option to Respondent-Accused for personal search before the police on the spot or Gazetted Officer or Magistrate and **thirteenthly,** the search of Respondent-Accused conducted before or by the police raiding party establishes non-compliance of Section 50 of NDPS



Act. Non-compliance of Section 50 of the NDPS Act vitiates the consent [Ext.PW-7/A]; the recovery; *and* renders alleged contraband inadmissible in evidence *and* such recovered contraband cannot be relied upon or used to hold the accused guilty as per mandate of law declared by the Hon'ble Supreme Court in the cases of **Suresh, Parmanand, Ranjan Kumar Chadha and Surat Singh** (supra); and reiteration of law by this Court in **Anil Kumar and Tara Chand** (supra); and ***lastly***, even Seizure-Memo, Ex.PW-6/A, dated 22.10.2010 reveals that the alleged contraband recovered upon personal search i.e. 150 grams of Cannabis-Charas was the only recovered contraband there was no other recovered from the Respondent-Accused, then, alleged recovery was inadmissible in evidence and same cannot be relied upon against the respondent-accused so as to hold him guilty. Giving an impermissible option to the Respondent-Accused for personal search by member(s) of raiding party, who were directly connected with the alleged raid, certainly deprives the Respondent-Accused of his right for being searched before an independent



designated officers [Gazetted Officer or Magistrate].

Accordingly, the consent memo taken by the police for personal search; and resultant personal search conducted on the basis of the illegal consent memo; and the contraband allegedly recovered in breach of Section 50 of the NDPS Act was inadmissible; and the same cannot be relied upon or used against Respondent-accused in the trial; and this glaring illegality vitiates the trial, in instant case.

10. Based on the facts and circumstances, the evidence on record and the mandate of law the Impugned Judgment dated 18.12.2014, passed by Learned Special Judge, acquitting the Respondent-accused, after due appreciation of evidence and facts and law, does not suffer from any illegality or infirmity, warranting any interference by this Court.

DIRECTIONS:

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

- (i) ***Criminal Appeal*** No. 410 of 2015, State of Himachal Pradesh vs Shashi Kant, ***is dismissed***;



- (ii) Impugned Judgment passed by the Learned Special Judge on 18.12.2014 in Sessions Trial No 11-S/7 of 2011 by Learned Special Judge, Shimla [HP], ***is upheld*** ;
- (iii) Acquittal of respondent-accused is reaffirmed;

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

May 06, 2026
[Shivender]