



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.117 of 2005

(In the matter of an application under Section 374(2) of the Criminal Procedure Code, 1973)

Dillip Kumar Sethi

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Ashreet Behera, Advocate

For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 19.02.2026 :: Date of Judgment: 26.02.2026

S.S. Mishra, J. The present Criminal Appeal, filed by the appellant is directed against the judgment and order dated 28.02.2005 passed by the learned Sessions Judge-cum-Special Judge, Cuttack in G.R. Case No.1226 of 2003/(15T./2003), whereby the appellant has been convicted for the offence under Section 21(b) of the N.D.P.S. Act and on that count, he is sentenced to undergo R.I. for three years and to pay a fine of Rs.10,000/- (rupees ten thousand), in default, to undergo further R.I. for six months.



2. Heard Mr. Ashreet Behera, learned counsel appearing for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

3. Prosecution story bereft of unnecessary details is that, on 18.08.2003, on receipt of reliable information that the accused was in possession of brown sugar for sale at Chunavati Lane, the Inspector-in-Charge of Chauliaganj Police Station (P.W.13) made a station diary entry (Ext.27) and deputed a raiding party comprising S.I. Surendranath Routray (P.W.9) as leader, S.I. S.S. Tripathy (P.W.1), Constable P.K. Lenka (P.W.4) and others to conduct a raid. Two independent witnesses (P.Ws.6 and 7) were also taken to the spot near Mangala Engineering Workshop, where the accused was found sitting and was apprehended while attempting to flee. The accused disclosed his identity as Dillip Sethi. P.W.9 served a written notice (Ext.3) informing him of his right to be searched in the presence of a Gazetted Officer or an Executive Magistrate. The accused opted in writing (Ext.3/2) to be searched before a Gazetted Officer. Accordingly, Sri J.K. Patra (P.W.8), City D.S.P., arrived at the spot, disclosed his identity and, upon the accused reiterating his



willingness, supervised the search. Prior to the search, the members of the raiding party and the independent witnesses offered their personal search to the accused.

On personal search, one polythene packet containing brown sugar was recovered from the right pocket of the accused's trouser, along with paper pieces and a matchbox from the other pocket. The Scientific Officer (P.W.3) was requisitioned, who weighed the contraband. The net weight of the brown sugar was found to be 5 grams and 200 milligrams. Two samples of one gram each were drawn, marked as 'A/1' and 'A/2', and the remaining contraband was marked as 'A'. All packets were sealed with the personal seal of P.W.9, signatures of the accused, Gazetted Officer, Scientific Officer and witnesses were obtained, and the articles were seized under seizure list (Ext.5). The specimen seal was also taken, and the seal was entrusted to an independent witness under zimanama (Ext.7). The accused was thereafter arrested. P.W.9 returned to the Police Station, submitted a written report (Ext.14), and on its basis a case was registered. The seized articles were resealed by P.W.13 and handed over for investigation to P.W.12, who made necessary entries in the



Malkhana register, examined witnesses, seized relevant documents, prepared the spot map through the Amin (Ext.1), and sent the samples to the State Forensic Science Laboratory for chemical examination on the orders of the learned S.D.J.M.

The chemical examination report (Ext.23) confirmed that the seized substance was brown sugar. Upon completion of investigation and compliance of statutory formalities, charge-sheet was submitted against the accused under Section 21(b) of the Act for unlawful possession of brown sugar for sale.

4. The prosecution has examined thirteen witnesses in support of its case. P.Ws.1, 4, 9 and 10 were police personnel, who were members of the raiding party. P.W.2 was the Amin, who prepared the spot map. P.W.3 was the Scientific Officer, who weighed the seized brown sugar. P.W.5 was a Police Officer, who claimed to have witnessed the seizure of the pant of the accused at the Police Station. P.Ws.6 and 7 were cited as independent witnesses, who were taken along by the police party prior to the search and seizure; however, they did not support the prosecution case. P.W.8 was the City Deputy



Superintendent of Police, Special Branch, Cuttack, who acted as the Gazetted Officer during the search. P.W.11 was a Police Constable in whose presence certain seizures were effected at the Police Station. P.W.12 was the Investigating Officer, who conducted the investigation. P.W.13 was the Inspector-in-Charge of Chauliaganj Police Station, who received the reliable information, directed P.W.9 to conduct the search and seizure, and subsequently entrusted the investigation to P.W.12.

5. The plea of the defence is one of complete denial and false implication. The accused has taken the specific stand that he was called from Nuabazar to the Police Station and was compelled to sign on certain blank papers. He has categorically denied having been in possession of any brown sugar. On such plea of denial and claim of innocence, he was put to trial.

6. The learned trial Court, placing substantial reliance on the testimony of the witnesses, other exhibits placed on record and after categorically analyzing all the questions put by the defence, arrived at a conclusion that:



“16. Attempt has been made on behalf of the defence to disbelieve the prosecution case that different pictures have been given by the witnesses regarding colour of brown sugar stated to have been seized. In my opinion, those statements cannot be taken into consideration in this case when prosecution has been able to prove that the sample which was sent to SFSL confirmed that it was brown sugar and the said sample was drawn from the material which was seized from the possession of the accused. As I have already stated that the finding of the SFSL has not been challenged by the defence, hence it cannot be said that the article which stated to have been seized from the possession of accused was not brown but any other material.

17. As per my above findings, I am of the opinion that the prosecution has been able to prove its case beyond all reasonable doubts against the accused that the accused was found in unlawful possession of brown sugar weighing 5 grams and 200 miligrams. Hence, I found the accused guilty of the charge under section 21(b) of the Act and I convict him thereunder.”

7. Aggrieved by the Judgement of conviction and order of sentence, the present appeal has been filed by the sole appellant.

8. Mr. Behera, learned counsel appearing for the appellant, primarily assails the conviction on the ground of non-compliance with the procedural safeguards enshrined under Section 50 of the N.D.P.S. Act.

It is contended that Ext.3, by which the accused was allegedly informed of his right to be searched in the presence of a Gazetted Officer or Executive Magistrate, and Ext.6, said to be the written consent of the accused, are doubtful on the face of the record. Learned



counsel submitted that both documents appear to have been written by the same person in Odia, whereas the accused has merely appended his signature in English. According to him, if the accused could sign in English, it reasonably follows that he was educated enough to write his own consent. In this circumstance, it raises serious doubt about the genuineness of the documents and leaves open the possibility that the consent may have been obtained under compulsion. In this regard, reliance is placed upon the judgment of this Court in ***Kashinath Sahu v. State of Orissa***¹, wherein, on similar facts involving doubt as to the authorship of the consent letter, the appeal was allowed on account of such inconsistencies. It is further argued that from paragraph 19 of the evidence of PW 12, it transpires that the written options (Exts.3 and 6) were scribed by S.I. Routray, a member of the raiding party. The relevant portion reads:

“.....I am acquainted with the handwriting and signature of SI Routray and City DSP Mr. Patra. The written option of Ext.3 and 6 given to the accused have been scribed by Mr. Routray.....”

¹ (2003) 24 OCR 781



Based on the above, learned counsel contended that when the accused could write his own consent, the fact that the same was written by a police officer renders the prosecution version doubtful and gives rise to the possibility of coercion. Learned counsel further submitted that Exts.3 and 6, which form the very foundation of compliance under Section 50 of the Act, were not produced at the time when the accused was initially forwarded to the Court. This omission, according to him, casts a serious cloud over their authenticity and the doubt that such may have been manufactured later cannot be ruled out. Attention is drawn to relevant part of paragraph 12 of the impugned judgment, wherein the learned Trial Court observed as follows:

“.....Mr. Panda has submitted that the independent witnesses have not supported the prosecution version that the accused was informed of his right and the written option asked by the Inspector and the consent of the accused (Ext.3) and the opportunity given by the Deputy Superintendent of Police in writing to get the consent of the accused (Ext.6) have been subsequently manufactured as those were not produced at the time of production of the accused and subsequently those were sent to Court and that would suggest that existence of Exts.3 and 6 were not there at the time of forwarding of the accused to Court and those have been subsequently created for the purpose of this case



particularly when no reasonable explanation has not come from the prosecution side for its non-production at the time of production of accused in Court. There is some force in the contention of Mr. Panda. Admittedly Exts.3 and 6 were not produced in Court when the accused was produced. In my opinion, the above omission is not fatal to the prosecution.....”

In view of these alleged inconsistencies and omissions, it is submitted that the mandatory procedural safeguards under Section 50 of the N.D.P.S. Act have not been strictly complied with. Such lapses, according to the learned counsel, create a substantial doubt in the prosecution case, and the benefit of such doubt must enure to the accused. It is, therefore, prayed that the appeal be allowed and the appellant be acquitted of the charge.

9. *Per contra*, the learned Additional Standing Counsel for the State submitted that all mandatory procedural safeguards, including those under Section 50 of the N.D.P.S. Act, have been strictly complied with. It was contended that the learned trial court, upon due appreciation of the oral and documentary evidence on record, has rightly held the accused guilty of the offence charged. According to the State, there has been no violation of the statutory requirements under Section 50 of the N.D.P.S. Act, and the findings recorded by



the learned trial court are well-reasoned and based on evidence. It is, therefore, submitted that the conviction and sentence warrant no interference by this Court.

10. Having thoughtful consideration to the rival submissions advanced at the Bar and upon a meticulous re-appraisal of the entire evidence on record, this Court proceeds to examine whether the prosecution has been able to establish strict and unimpeachable compliance of the mandatory requirement embodied under Section 50 of the N.D.P.S. Act.

At the outset, it must be borne in mind that the safeguards provided under Section 50 are not empty formalities or mere farce but a valuable and substantive right upon the accused, namely, the right to be informed that he may opt to be searched in the presence of a Gazetted Officer or an Executive Magistrate. The object behind incorporating such a safeguard is to ensure transparency in the search process and to eliminate the possibility of false implication. The Hon'ble Supreme Court has repeatedly held that the requirements of Section 50 are mandatory in nature and must be strictly complied



with. It is trite in law the graver the offence, stricter should be the compliance of procedural safeguard.

11. In this case it is evident that Exts.3 and 6 constitute the very foundation of the prosecution case regarding compliance of the mandatory requirement of informing the accused of his right to be searched in the presence of a Gazetted Officer or an Executive Magistrate. However, certain circumstances cast serious doubt on their genuineness. Admittedly, these documents were not produced at the time when the accused was first forwarded to the Court. No satisfactory explanation has been offered by the prosecution for such non-production at the earliest point of time.

Further, the evidence of PW 12 reveals that both Exts.3 and 6 were scribed by a member of the raiding party one Mr. Routray. When the accused could sign in English, and there is nothing on record to show that he was incapable of writing his own statement, the fact that the consent letter was written by a police officer assumes significance. Surprisingly, Ext.6 supposed to have been written by the Magistrate has also been written by the Police Officer, who has also



written Ext.3, however, the Magistrate has simply appended his signature at the bottom. Even the signatures of the accused in both the exhibits appear to the naked eyes to be different, hence, suspicious doubt about manipulation or afterthought creation of such documents cannot be ruled out. In cases arising under the N.D.P.S. Act, where strict compliance of statutory safeguards is imperative, even minor deviations may assume importance if they create doubt about adherence to mandatory provisions.

12. The law is well settled that compliance with Section 50 of the N.D.P.S. Act is mandatory and failure to strictly adhere to the same renders the recovery suspect and vitiates the conviction. The Hon'ble Supreme Court as well as this Court, in a catena of decisions, including *Vijaysinh Chandubha Jadeja v. State of Gujarat*² and *Ashok Kumar Sharma vs State Of Rajasthan*³ have consistently held that non-compliance or doubtful compliance of the procedural safeguards under Section 50 proves fatal to the prosecution case.

² 2011 (1) SCC 609

³ 2013 (2) SCC 67



13. In the case at hand, the cumulative effect of the non-production of Exts.3 and 6 at the time of initial production of the accused, the way those documents were scribed, and the lack of convincing explanation from the prosecution, create a reasonable doubt as to whether the mandatory safeguards were in fact observed in their true letter and spirit. Such doubt must necessarily enure to the benefit of the accused. Accordingly, this Court holds that the prosecution has failed to establish strict and unimpeachable compliance of Section 50 of the N.D.P.S. Act. The conviction, therefore, cannot be sustained.

14. Hence, the judgment and order dated 28.02.2005 passed by the learned Sessions Judge-cum-Special Judge, Cuttack in G.R. Case No.1226 of 2003 (15 T./2003) are hereby set aside. The appellant is acquitted of the charge and be set at liberty forthwith, if his detention is not required in any other case. Bail bonds furnished by the appellant stand discharged.

15. Accordingly, the CRLA is allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated 26th of February, 2026/ Subhasis Mohanty