

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).4184/2004

(From the judgement and order dated 21/10/2002 in CRLA No. 962/1999 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

VIJAYSINH CHANDUBHA JADEJA  
)

Petitioner(s)

VERSUS

STATE OF GUJARAT  
)

Respondent(s)

(With appln(s) for c/delay in filing SLP, exemption from filing O.T., bail, and permission to file Volume-II with office report )

Date: 26/07/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner(s) Mr. U.U. Lalit, Sr. Adv.  
Ms. Ranjeeta Rohatgi, Adv.  
Mr. Arun Francis, Adv. for  
M/S P.H. Parekh And Co.

For Respondent(s) Mr. N. Madhukar, Adv.  
Mrs. Sadhna Sandhu, Adv.  
Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The appellant was charged of possessing contraband article alleged to be brown sugar weighing 1350 miligram in Sankadi Sheri, near Bangadi Bazar, Rajkot.

The trial court convicted the appellant under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and

sentenced him to undergo simple imprisonment for ten years with a fine of Rs.1 lakh.

Aggrieved against the order of the trial court, the accused-appellant filed an appeal before the High Court. The High Court while maintaining the sentence, converted the simple imprisonment into rigorous imprisonment.

One of the points raised before the High Court was with regard to the compliance of Section 50 of the Act, i.e., the accused-appellant was not informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate and that merely being asked as to whether the accused-appellant would like to be searched in the presence of a Gazetted Officer or a Magistrate would not be sufficient compliance of the provisions of Section 50 of the Act. This submission of the accused-appellant was turned down by the High Court relying upon a three-Judge Bench decision of this Court in *Joseph Fernandez v. State of Goa* [2000(1) SCC 707].

The High Court did not take note of the Constitution Bench decision in *State of Punjab v. Baldev Singh* [1999(6)SCC 172], wherein it was held that the accused has to be informed of his right to be searched in the presence of a Gazetted Officer or a Judicial Magistrate and mere enquiry from the accused whether he would like to be searched in the presence of a Gazetted Officer or a Magistrate was not sufficient compliance of the provisions of Section 50 of the Act. Following are the judgments of this Court which support this view:

1994(3)SCC 299 - *State of Punjab v. Balbir Singh* (by two Hon'ble Judges)

2000(10) SCC 222 - *K. Mohanan v. State of Kerala* (by two Hon'ble Judges)

2002(8) SCC 351 - *Vinod v. State of Maharashtra* (by two Hon'ble Judges)

Subsequent to the Constitution Bench decision in *Baldev Singh's case* (supra), this Court in the following decisions rendered by different combination of Benches has taken contradictory views :

2000(1) SCC 707 - *Joseph Fernandez v. State of Goa* (by three Hon'ble Judges)

2004(2) SCC 56-*Prabha Shankar Dubey v. State of M.P.*(by two Hon'ble Judges)

2004(2) SCC 608 - *Krishna Kanwar v. State of Rajasthan*(by two Hon'ble Judges)

The conflict of opinion is on the interpretation of Section 50 of the Act as placed in Baldev Singh's case (supra). In view of the conflicting opinions expressed by different Benches on the interpretation of the provisions of Section 50 of the Act in Baldev Singh's case (supra), we deem it appropriate that the matter be referred to a larger Bench of three Hon'ble Judges. Registry is directed to place the matter before Hon'ble the Chief Justice for appropriate orders.

As the appellant has already undergone eight years of rigorous imprisonment out of the the total sentence of 10 years' rigorous imprisonment awarded to him, hearing of the appeal be expedited. Liberty to mention.

(J.S. Rawat)  
Court Master

(Kanwal Singh)  
Court Master