

A STATE OF PUNJAB
v.
LABH SINGH ETC.

JULY 19, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 :

C Section 50—Accused—Search of—Right to be informed about entitlement to be searched in presence of a gazetted officer—Violation of right—Effect of—Held no exhaustive or mathematical formula of universal application can be laid down—Court should consider each case on its own setting—Absence of any writing from the accused to the effect that he was informed of his right and that the same was waived—Also long delay in the matter—Respondents acquitted in such circumstances—Held no interference was called for with acquittal order.

D *State of Punjab v. Balbir Singh*, [1994] 3 SCC 299; *State of Punjab v. Jasbir Singh*, [1996] 1 SCC 288 and *State of Himachal Pradesh v. Prithi Chand & Anr.*, [1996] 2 SCC 37, referred to.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 730 of 1996 Etc.

From the Judgment and Order dated 22.1.91 of the Punjab & Haryana High Court in CrI.M. No. 13695-M(A) of 1990.

F R.S. Suri for the Appellant.

Satish Vig for Respondent in CrI.A. No. 730/96.

P.N. Puri for the Respondent in CrI.A. No. 731/96.

G The following Order of the Court was delivered :

Leave granted.

H These appeals arise under the Narcotic Drugs and Psychotropic Substances Act, 1985. The respondents were acquitted on trial on the ground that they were not informed of their valuable right that under

Section 50 of the Act they were entitled to be searched in the presence of the Gazetted Officer. Violation thereof vitiates the trial as the accused have the statutory right to be searched. The absence of the their information as to the said right in one the infirmities to the validity of their prosecution.

The question was considered in *State of Punjab v. Balbir Singh*, [1994] 3 SCC 299. Subsequently, another Bench of this Court in *State of Punjab v. Jasbir Singh*, [1996] 1 SCC 288 has pointed out that it would be open to the search officer to inform the suspect, at the time of search, that he is entitled to be searched in the presence of the Gazetted Officer and also to take in writing from the accused that he has been so informed and that the accused has waived that right. Thus it would form part of the record as contemporaneous evidence. Thereafter, it may not be open to the accused to take the plea of non-compliance of Section 50. It would be for the Court to consider, at the trial, whether the officer who conducted the search had as a fact informed the accused of that right and whether the accused had waived that right of being searched only in the presence of a Gazetted Officer. This Court held that :

"The matter of appreciation of evidence and the totality of the facts and circumstances have to be considered by the trial Court. On the facts in that case, it was held that since the Additional Sessions Judge was not inclined to accept the prosecution case in the absence of anything in writing, this Court confirmed the acquittal."

In *State of Himachal Pradesh v. Prithi Chand & Anr.*, [1996] 2 SCC 37, this Court further elaborately considered the effect of the violation of Section 50 and held that any evidence recorded and recovered in violation of the search and the contraband seized in violation of the mandatory requirement does not *ipso facto* invalidates the trial. Section 50 contemplates right to be searched in the presence of a Gazetted Officer. It depends upon the facts and circumstances in each case. It was found that the discharge of the accused on that ground was deprecated. In view of the long delay in the matter, this Court declined to interfere with the discharge recorded by the Additional Sessions Judge.

In view of the settled legal position that the accused has valuable right to be informed of his right to be searched in th presence of a Gazetted Officer, the search officer invariably would conduct the search subserving the salutary right given under Section 50. Each case should be considered

- A in the light of the facts and circumstances in which the contraband was seized, viz., time when the search was conducted, the place where it was seized, whether police had prior information of the contraband being in transport or place of concealment, whether there was proper opportunity to the police to secure the presence of a Gazetted Officer; whether the delay in search and seizure would result in the escape of the accused from arrest or contraband would be destroyed or whisked away and host of all relevant attendant circumstances. Each case depends upon its own factual scenario and no exhaustive or mathematical formula of universal application can be laid down. The Court has to consider each case on its own setting. In view of the absence of any writing from the accused to the effect
- B that the accused was informed of his right and that the same was waived taken by the officer who conducted the search and seized the contraband and in view of the long delay that has taken place, we think that these may not be cases warranting interference with the order of acquittal at this distance of time.
- C
- D The appeals are accordingly, dismissed. The respondents are directed to be set at liberty forthwith.

T.N.A.

Appeals dismissed.