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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(101)

CRA-D-364-DBA-2004 (O&M)**Date of decision : 18.02.2026**

Inspector Customs, Ferozepur

... Appellant

Versus

Tasvir Singh @ Pehalwan and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE N.S. SHEKHAWAT
HON'BLE MR. JUSTICE H.S. GREWAL**

Present:- Mr. Rishab Kapoor, Senior Standing Counsel for the appellant.

Mr. R.S. Bains, Senior Advocate with
Mr. Mohan Singh Chauhan, Advocate for respondent No.1.

Mr. Ranjan Lakhanpal, Advocate and
Mr. Shubhkaran, Advocate for respondent No.2.

Mr. Salil Dev Singh Bali, Senior Advocate with
Ms. Archana Chauhan, Advocate, Ms. Simmy Gupta, Advocate
Ms. Jaiveer Singh, Advocate & Ms. Arti Singh, Advocate
for respondent No.3.

H.S. Grewal, J.

1. This appeal has been preferred by the appellant-Inspector Customs, Ferozepur against the judgment dated 07.01.2003 passed by the learned Special Judge, Ferozepur in case FIR No.434 dated 05.12.1998, registered under Sections 22 and 23 of the NDPS Act, at Police Station Sadar Ferozepur, whereby the respondents had been acquitted of the charges by giving them the benefit of doubt.

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2. The case of the prosecution is that on 04.12.1998 at about 06:30 PM, a secret information was received by PW1 V.K. Prashar, Superintendent Customs in the presence of Inspector Nirmal Singh Customs, Ferozepur to the effect that three smugglers carrying brown powder, heroin and arms were expected to come from Mohamdiwala Indo-Pak Border towards village Palla Megha and they could be nabbed red-handed if a trap is laid. Considering the information to be reliable, V.K. Prashar informed the then SSP, Ferozepur. Thereafter, Inspector Nirmal Singh, under the supervision of V.K. Prashar along with Satinder Geol, Inspector Customs, Joginder Kumar, DSP (Police), and other customs and police officials, set up a naka (check-point) at about 10:00 PM on a kacha path at Palla Mor, in the area of village Palla Megha.

3. At around 10:15 PM, all the three accused/respondents were seen coming from the side of village Mohamdiwala Indo-Pak Border towards village Palla Megha. On seeing the police and customs officials, they immediately tried to run away, but were overpowered and apprehended. Since it was suspected that they were carrying contraband, V.K. Prashar (PW1) informed them of their right to be searched before a Gazetted Officer or a Magistrate. The accused/respondents expressed their willingness to be searched in the presence of a Gazetted Officer of the Customs Department. Accordingly, a consent memo was prepared. Two independent public witnesses, Gurdev Singh and Narinder Singh, were called and associated with the investigation, and a memo to this effect (Ex.P2) was also prepared.

4. Thereafter, in the presence of Sh. V.K. Prasher and said independent public witnesses, namely, Gurdev Singh and Narinder Singh,



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search of Lakhbir Singh (respondent No.2) was conducted from whom recovery of four packets of heroin each weighing one kg. was effected which was tied with a '*parna*' around his waist. Similarly, four packets each containing one kg. heroin were recovered from Tasvir Singh(respondent No.1) which were tied in a '*parna*' around his waist and three packets each containing one kg. heroin were recovered from Sukhdev Singh (respondent No.3) tied in a '*parna*' around his waist alongwith one pistol of .30 bore alongwith five live cartridges was also recovered.

5. After completion of necessary investigation, the respondents alongwith the recovered contraband, .30 bore and five live cartridges were brought to the Customs Office at Ferozepur. On 05.12.1998, the respondents made their confessional statements (Ex.P4, Ex.P5 & Ex.P6) which were reduced into writing. The samples taken from the 11 packets of heroin were sent to the Central Revenue Control Laboratory, New Delhi, which, in its report dated 20.01.1999, confirmed that the samples were heroin.

6. Upon completion of investigation, challan was presented against the respondents and charges under Sections 22 and 23 of the NDPS Act were framed against them to which they pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined PW1 V.K. Prasher, Superintendent, Custom, who reiterated the version as mentioned in the FIR and supported the prosecution case. He deposed that on 04.12.1998 at about 10:15 PM, they noticed there persons coming from Mohamdiwala Pak Border to village Palla Megha on kacha track. On seeing them, all the accused/respondents tried to turn away towards border side. They took quick

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action and nabbed all of them. They disclosed their name as Lakhbir Singh @ Lakha, Sukhdev Singh @ Sukha and Tasbir Singh @ Pehalwan. He, thereafter, made an offer to all the accused/respondents whether they wanted to get their search conducted before Gazetted officer of Custom or Magistrate but they opted to get their search conducted in the presence of Gazetted Officer of Custom. In this regard, consent memo was taken which is Ex.P1. All the accused/respondents thumb-marked the same in token of its correctness and it was attested by him as well as PW2 Nirmal Singh. Since he himself was a gazetted officer, he called Gurdev Singh and Narinder Singh, independent witnesses and thereafter, panchnama (Ex.P2) was prepared which was signed by Nirmal Singh Inspector and signed by both the independent witnesses. All the accused/respondents also thumb-marked the panchnama (Ex.P2). He also deposed that on search conducted by them, four packets of heroin weighing 1 kg. each were recovered from the possession of Lakhbir Singh. That packets were tied by Lakhbir Singh in a '*parna*' around his waist. Four packets of 01 kg. each were also recovered from the possession of Tasbir Singh in a '*parna*' which was tied with his waist. From the person of Sukhdev Singh, three packets of heroin weighing one kg each, one pistol and five live cartridges in a '*parna*' tied with his waist were recovered. The entire case property was taken into possession by Nirmal Singh Inspector in his presence through recovery memo Ex.P3 which was thumb marked by all the accused/respondents. He also deposed that all the accused persons had confessed their guilt in their statements voluntarily. Accused Tasbir Singh disclosed that he had to obtain Rs.77,000/- for this work out of which he got Rs.5,000/- advance from a



person, namely, Vinod Kumar @ Emphy. In his cross-examination, PW1 deposed that in the presence of independent witnesses, the accused were told that their search was to be conducted and nothing else was stated by Inspector to the accused. As the accused/respondents stated that they wanted to get their search conducted in the presence of a Gazetted officer, then the public witnesses were called. Again said Inspector stated to the accused/respondents that their search was to be conducted whether they wanted to get their search conducted in the presence of Gazetted officer of Custom or Magistrate and the accused opted to give their search in the presence of Gazetted officer. Then the consent memo of the accused was prepared. It is further stated that the offer was given by him and the Inspector jointly. Only one consent memo was recorded which was jointly thumb marked by all the accused/respondents. He admitted the fact that it was a joint offer given to all the three accused. He also stated that the case property was produced before the Magistrate and the Magistrate signed on the case property. They did not place these documents on judicial file. He denied the suggestion that the case property was not produced before the Magistrate. It is also stated that the secret information was received at about 05:00 PM in their office. The informer gave the secret information in writing but they did not note down that secret information.

8. PW2 Sh. Nirmal Singh, Inspector Custom has corroborated the version as given by PW1 V.K. Prasher and supported the case of the prosecution. During his cross-examination, he stated that Ex.D1, the copy of the FIR was attached by them with the complaint. Hardev Singh Inspector, SHO, Police Station Sadar Ferozepur was not with them at the time of



nakabandi or recovery. DSP Joginder Kumar was with them at that time. He admitted the fact that the secret information was written but the same was not on the judicial file. The naka was held after about 04 hours from the time of secret information. He also admitted that the weighing material was with them. They had weight of one kg and weighing scale. The heroin was weighed along with packets. The packet was weighing one kg. They had no weight of 10 grams. They took out the sample by guess only. Firstly, heroin was weighed and the samples were taken. The weighing process continued upto 12:30 AM.

9. After closing the prosecution evidence, the statement of the respondents under Section 313 Cr.P.C. was recorded wherein they categorically denied all the allegations and pleaded innocence. They stated that they had been falsely implicated in this case.

10. Respondent No.2-Lakhbir Singh @ Lakha stated that during 1996, he had a dispute regarding some land at his native village Jhugian Jagat Singh, P.S. Valtoha, against one Balbir Singh @ Bhira, who was a relative of Sh. G.S. Ferurai, the then SSP, Tarn Taran regarding which a criminal case bearing FIR No.100 of 30.07.1996 was also got registered at Police Station. However, the then SSP got involved him in a false and baseless criminal cross case and that subsequently on 30.11.1998 at about 11.00 PM said G.S. Ferurai, the then SSP Ferozepur got illegally picked him alongwith his relatives from his residence at Amritsar in a Car regarding which request/telegrams were sent to the higher authorities including the Chief Minister, Govt. of Punjab, the Chief Justice of Punjab & Haryana High Court, Chandigarh. But after keeping him and others



in illegal detention, the instant false and baseless case was got padded up and fabricated against him and his co-accused by said Sh. G.S. Ferurai.

11. Other respondents-Tasvir Singh @ Pehalwan and Sukhdev Singh @ Sukha also pleaded that they were illegally picked up by the Police and were kept in illegal confinement by the Police of CIA Staff and subsequently, on 4.12.1998 through the officials of Customs Department, they were got involved in this baseless and false case. They had also proved on record Ex.D1, i.e. copy of FIR No.434 of 5.12.1998, registered against them regarding the same occurrence at PS Sadar, Ferozepur, at the instance of Inspector Hardev Singh, the then SHO, a copy of the statement of said Balbir Singh @ Bhira (Ex.D2) on the basis of which cross case (FIR No.100 of 30.07.1996 PS Valtoha) was registered against Lakhbir Singh alias Lakha and others. In defence, the respondents examined following witnesses :-

(i) DW1 Head Constable Tarsem Lal brought the summoned file of aforesaid FIR No.100 dated 30.07.1996, registered under Sections 323, 324, 325, 326, 506, 34 IPC and Sections 25/27/54/559 of the Arms Act at Police station Valtoha registered on the statement of Lakhbir Singh. The cross case against this FIR was registered on the statement of Balbir Singh.

(ii) DW2 Harbhajan Lal, S.S.O. Centre Telegraph Office, Amritsar proved the receipt of telegrams Ex.D3, Ex.D4, Ex.D5 which were issued by their office i.e. Central Telegraph Office, Amritsar.



(iii) DW3 Balraj Singh and DW4 Gultar Singh, both sons of Lakhbir Singh deposed that on 01.12.1998 and 03.12.1998, they gave telegram to the Chief Justice of Punjab and Haryana High Court, Chandigarh and the Chief Minister, Punjab Government and DGP, Punjab regarding kidnapping of their father, brother Partap Singh and two other relatives from their house. PW4 specifically deposed that on 30.11.1998 at about 11:00 PM, his father and brother Partap Singh were kidnapped by the Ferozepur Police in a white ambassador car from their house.

12. After considering the statements of all the witnesses and taking into account the evidence led by both the sides, the trial Court had acquitted the respondents of the charges by giving them the benefit of doubt.

13. Learned counsel for the appellant/State submits that the trial Court wrongly acquitted the respondents despite sufficient evidence on record. It is submitted that a huge quantity of heroin, totalling 11 kilograms, along with a pistol and live cartridges, was recovered from conscious possession of the respondents. The search and seizure proceedings were conducted in the presence of a Gazetted Officer and independent witnesses, thereby ensuring compliance with the statutory safeguards under the NDPS Act. The respondents were duly informed of their right to be searched before a Gazetted Officer or a Magistrate and had voluntarily opted to be searched before a Gazetted Officer of the Customs Department. Learned counsel also submits that minor discrepancies or procedural lapses, if any, do not go to the root of the matter. It is further submitted that the confessional statements made by the respondents,

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coupled with the report of the Central Revenue Control Laboratory confirming the contraband to be heroin, clearly establish their guilt beyond reasonable doubt. It is, therefore, prayed that the impugned judgment of acquittal be set aside and the respondents be convicted in accordance with law.

14. *Per contra*, learned counsel for the respondents submits that the judgment of acquittal passed by the learned trial Court is well-reasoned and based on proper appreciation of evidence. It is submitted that there is non-compliance of Section 50 of the NDPS Act, as a joint offer was allegedly made to all three accused and only one consent memo was prepared. Each accused was not individually informed of his statutory right which clearly vitiates the entire search and recovery proceedings. It is further submitted that the mandatory provisions of Section 42 of the NDPS Act were also not complied with, as the alleged secret information was neither proved to have been reduced into writing nor shown to have been forwarded to a superior officer. Both PW-1 and PW-2 admitted in cross-examination that the written information was not available on the judicial file, which creates serious doubt about the authenticity of the prosecution story. Learned counsel also submits that none of the independent witnesses allegedly joined at the time of recovery were examined before the trial Court. The defence version regarding illegal detention and false implication, supported by documentary evidence and defence witnesses, further raises a reasonable doubt. It is, therefore, prayed for dismissal of the appeal preferred by the State.

15. We have heard learned counsel for the parties and have carefully perused the material available on record.



16. The main and fatal defect in the present case is non-compliance of Section 50 of the NDPS Act, which governs personal search. The admitted case of the prosecution is that a joint offer was made to all three accused/respondents and only one consent memo was prepared which was jointly thumb-marked by all of them. It is also not in dispute that the same was not found traceable in the judicial record.

17. It must be noted that offences under the NDPS Act carry very harsh punishments. Therefore, the procedural safeguards provided in the Act are not mere formalities but are mandatory in nature, meant to protect an accused from false implication and misuse of authority. Any deviation/lapse from these prescribed procedures, especially those relating to search and seizure, goes to the very root of the prosecution case.

18. It is also well-settled that each accused must be individually informed of his statutory right to be searched before a Gazetted Officer or a Magistrate and must be given an independent opportunity to exercise or waive such right. A joint or collective communication of this right is impermissible under the law and frustrates the very object of Section 50.

19. It has been held by the Hon'ble Supreme Court, in the case of **State of Rajasthan vs. Parmanand and another**, 2014(5) SCC 345 that each accused must be individually informed that he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. A joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purpose of Section 50 of the NPDS Act. The relevant extract thereof is reproduced as under:-



*“In our opinion, a joint communication of the right available under [Section 50\(1\)](#) of the NDPS Act to the accused would frustrate the very purport of [Section 50](#). Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the [NDPS Act](#) carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under [Section 50\(1\)](#) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in *Paramjit Singh* and the Bombay High Court in *Dharamveer Lekhram Sharma* meets with our approval. It bears repetition to state that on the written communication of the right available under [Section 50\(1\)](#) of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.”*



20. Another serious illegality committed by the raiding party is that the accused were offered a restricted choice, i.e. search before a Gazetted Officer of the Customs Department or a Magistrate. Such an offer is contrary to law. The purpose of Section 50 of the NDPS Act is to ensure that the search is conducted in the presence of an independent officer to maintain fairness and transparency. An officer who is part of the raiding party cannot be considered independent.

21. The Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Parmanand (supra)*** has clearly held that giving an option to be searched before a Gazetted Officer who is part of the raiding party is impermissible and amounts to breach of Section 50 of the NDPS Act. The relevant extract thereof is reproduced hereunder:-

“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. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed."

22. In the present case, PW-1 was himself a Gazetted Officer and an integral member of the raiding party. Consequently, the offer purportedly extended to the accused was rendered illusory and legally unsustainable, as it did not afford them an effective and independent choice. In such circumstances, the search stands vitiated, particularly when the prosecution has failed to establish that each of the respondents was individually informed of his right under Section 50 of the NDPS Act.

23. The prosecution case further suffers from non-compliance of Section 42 of the NDPS Act. Although it is alleged that secret information was received prior to the raid but the prosecution has failed to produce any material on record to show that such information was reduced into writing or that it was promptly forwarded to a superior officer, as required under the law. Significantly, both PW-1 and PW-2 have admitted during cross-examination that while the information was allegedly recorded in writing, the same is not available on the judicial file. This omission assumes considerable importance,

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as strict compliance with Section 42 is mandatory and serves as a safeguard against false implication and subsequent fabrication of evidence.

24. Moreover, none of the independent witnesses, who were allegedly joined during the course of investigation, appeared before the trial Court to support the prosecution case. Their non-examination further casts a serious doubt on the veracity and fairness of the prosecution version.

25. Considering the above facts and circumstances, we are of the considered view that the alleged recovery cannot be said to be legally sustainable. It was the duty of the prosecution to strictly comply with the mandatory legal safeguards and to prove the same on record. However, in the present case, the prosecution has failed to discharge this burden. The learned trial Court has properly examined and appreciated the evidence, considered the important contradictions and legal defects, and has taken a reasonable and justified view based on the material available on record.

26. Consequently, we do not find any illegality or perversity in the judgment of the trial Court acquitting the respondents and the appeal being devoid of any merit is, hereby, dismissed.

27. Pending application(s), if any, shall stand disposed of accordingly.

(H.S.GREWAL)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

18.02.2026
A.Kaundal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No