

Search and Seizure under NDPS Act

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State of Punjab vs Balbir Singh
(1993)3 SCC 299

- ▶ Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc., when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place.

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- ▶ **If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of Cr. PC namely Sections 100 and 165 Cr. PC. If there is no strict compliance with Section 100 or Section 165 it would not vitiate the trial. such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case**

- ▶ On prior information, the empowered officer or an authorised officer while acting under Section 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a gazetted officer or a magistrate
- ▶ The obligation to inform is mandatory. The language is clear and the provision implicitly makes it obligatory on the authorised officer to inform the person to be searched of his right.

- ▶ **Failure to inform the person to be searched and if he so requires, failure to take him to the gazetted officer or the magistrate, would amount to non-compliance of Section 50.**
- ▶ **In cases of chance recovery during normal investigation by a police officer, Section 50 would not apply.**
- ▶ **If the police officer is an empowered officer then from that stage on ward he should observe the procedure under NDPS Act. If he is not an empowered officer then he should inform an empowered officer who would proceed therefrom in accordance with NDPS Act.**

Gurbax Singh v. State of Haryana (2001) 3 SCC 28

- ▶ On checking by the staff of a second class compartment of a train, the appellant, who was sitting in the compartment became panicky and left the train carrying a katta (gunny bag) on his left shoulder.
- ▶ A Sub-Inspector who was present on platform for checking smuggling and other antisocial elements, on suspicion, nabbed him and found that he was carrying poppy straw weighing 7 kgs. in the bag.

- ▶ It was held that the Police Officer had neither information, nor knowledge nor reason to believe that the offence under the NDPS Act had been committed and therefore section 50 was not applicable

State of HP vs Sunil Kumar

AIR 2014 SC 2564

- ▶ In a police check of buses for ticketless travelers, the accused was seen concealing something under his clothes.
- ▶ He was asked to disembark from the bus and on search 'charas' was found in a polythene packet tied under his belly.
- ▶ The SC held that there was no prior information nor bus was being checked for probable recovery of narcotics, therefore, it was a chance recovery and Section 50 would not be attracted.continued

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- ▶ The SC further held that the police in those circumstances could have reason to ‘suspect’ that some contraband could be found but they had no ‘reasons to believe’ that contraband could be found; suspicion cannot be equated with reasons to believe.

M Prabhulal vs Assistant Director

AIR 2003 SC 4311

- ▶ Search by Gazetted Officer U/S 41(2)- Section 42 does not apply
- ▶ It is clear from the language of Sub-section (2) of Section 42 that it applies to officer contemplated by Sub-section (1) thereof and not to a Gazetted Officer contemplated by Sub-section (2) of Section 41, when such Gazetted Officer himself makes an arrest or conducts search and seizure

Saiyad Mohd. Saiyad Umar Saiyed vs Gujarat (1995) 3 SCC 610

- ▶ On a secret information that the accused was selling charas the area was raided and charas was recovered from the possession of the accused.
- ▶ The police inspector who conducted the search did not say in evidence that he had informed the accused about his right to opt for his search in presence of a Magistrate or a Gazetted Officer.

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- ▶ SC Approved the findings in Balbir Singh's case and held that the Requirement of Section 50 is mandatory.
- ▶ The officer conducting the search must specifically depose that he had informed the person to be searched about his right to demand that the search be carried out in the presence of a Gazetted Officer or a Magistrate
- ▶ Section 114 *illustration e* of The Evidence Act cannot be pressed into service to raise a presumption that Section 50 was complied with.

Ali Mustaffa Abdul Rahman Moosa v. Kerala, 1994 (6) SCC 569

- ▶ On secret information the accused, a foreign national, was searched when he was in the 1st class waiting room at Railway station Quilton and three packets of charas were seized.
- ▶ The argument that the question of giving option to the accused in compliance with Section 50 of the Act is subject to the condition that the accused 'requires' that he be searched in the presence of a Gazetted Officer or a Magistrate was repelled and the law laid down in Balbir Singh's case was reiterated and applied.

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- ▶ Pooran Mal v. The Director of Inspection (Investigation), 1974 (1) SCC 345, was also considered and the argument that the contraband seized during an illegal search could still be used to prove possession of narcotic drug, was rejected
- ▶ The judgment in Pooran Mal case only lays down that the evidence collected as a result of illegal search or seizure, could be used as evidence in proceedings against the party under the Income Tax **Act**

Himachal Pradesh v. Pirthi Chand

1996 (2) SCC 37

- ▶ The question was whether at the stage of taking cognizance of the offence, the accused could be discharged, even before the trial was conducted on the ground that Section 50 of NDPS Act had not been complied with.
 - ▶ It was held that the evidence collected in a search in violation of law does not become inadmissible in evidence under the Evidence Act. Though the search may be illegal but the evidence collected, i.e., Panchnama etc., nonetheless would be admissible at the trial.
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- ▶ The Evidence Act permits relevancy as the only test of admissibility of evidence.
- ▶ *Pooran Mal v. Director of Inspection* 1974 (1) SCC 345) was interpreted as laying down the law that the evidence obtained under an illegal search and seizure does not exclude relevant evidence on that ground. It is wrong to invoke the spirit of Constitution to exclude such evidence.
- ▶ Ali Mustafa's case was not brought to the notice of the apex court.

State of Punjab v. Labh Singh, 1996 (5) SCC 520


- ▶ Each case should be considered 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.

State of Punjab vs Baldev Singh

AIR 1999 SC 2378

(constitution Bench)

- ▶ When acting on prior information duty to inform the suspect of his right under Section 50 is imperative and failure in this regard would cause prejudice to the accused.
- ▶ Information need not be necessarily in writing.
- ▶ Failure to take the suspect to nearest Magistrate or a gazette Officer if he opts for it, would render recovery suspect and vitiate the conviction.

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- ▶ Use of evidence collected in breach of safeguards provided in Section 50 would render the trial unfair.
 - ▶ Unfair trial is contrary to our concept of justice.
 - ▶ Argument that the society would suffer if such evidence is excluded was repelled with observation that the means to achieve the end result must be above board and remedy lies in investigating agencies following the rules scrupulously.

- ▶ Presumption under Section 54 of NDPS Act can only be drawn when it is established that the accused was found to be in possession of contraband in a search conducted in accordance with the mandate of Section 50.
- ▶ Judgment in Pooran Mal's case does not lay down that an illicit article seized during search of a person in violation of Section 50 NDPS Act can be used as evidence of unlawful possession by the person.
- ▶ Approved the judgment in Ali Mustafa's case

Joseph Fernandez Vs. State of Goa, 2001 (1) SCC p.707

- ▶ **The suspect was asked before the search “If you wish you may be searched in the presence of a gazetted officer or a Magistrate”;**
- ▶ **A three judges bench of SC held that this was “substantial compliance” with the requirement of Section 50 of the NDPS Act.**

Prabha Shankar Dubey Vs. State of M.P

2004(2) SCC p.56

- ▶ **The suspect was asked “ You would like to give me search or you would like to be searched by a gazetted officer or by a Magistrate”. This was held to be substantial compliance of the requirement of Section 50 of the NDPS Act**
- ▶ **The accused (suspect) has to be told in a way that he becomes aware that the choice is his and not of the officer concerned, even though there is no specific form.**

Krishan Kanwar (Smt.) Alias Thakuraeen

Vs.

State of Rajasthan, 2004(2) SCC p.608

- ▶ **No specific form is prescribed**
- ▶ **"what is necessary is that the accused (suspect) should be made aware of the existence of his right**
- ▶ **the court has to see the substance and not the form of intimation.**
- ▶ **Whether the requirement of Section 50 have been met is a question which is to be decided on the facts of each case**

Vijaysinh Chandubha Jadeja vs State Of Gujarat

AIR2011 SC 77

- ▶ In view of conflicting decisions of the apex Court In appreciating the law laid down by the Constitution Bench in Baldev Singh's case, It was felt that the matter required some more clarification by a larger Bench
- ▶ What is scope and width of the expression "if the person to be searched so requires" as figuring in sub-section (1) of Section 50 .

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- ▶ **The apex Court rejected the theory of “substantial compliance” and held that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez and Prabha Shankar Dubey is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra).**

Madan Lal vs Himachal Pradesh AIR 2003 SC 3642

- ▶ On personal search of the accused, nothing incriminating was found but when the car was searched, the contraband was found and, under these circumstances, it was held that Section 50 does not extend to search of a vehicle or container or bag or premises.

Kalema Tumba v. State of Maharashtra (1999) 8 SCC 463

- ▶ When the person of an accused is to be searched then he is required to be informed about his right to be examined in presence of a gazetted officer or a magistrate.
- ▶ In facts of that case the Court held that Heroine was found from the bags belonging to the appellant and not from his person and therefore it was not necessary to make an offer for search in presence of a gazetted officer or a magistrate.

Himachal Pradesh vs Pawan Kumar (2005) 4SCC 350

- ▶ In this case as a police party was checking buses at the bus stop, the accused who was carrying a bag, came out of the bus from rear gate and tried to run away. The police personnel got suspicious and after a chase apprehended him near the gate of bus stand. A search of the accused and the bag was conducted and 360 gms. of opium wrapped in polythene was found inside the bag.

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- ▶ A larger bench of SC considered whether Section 50 would also apply to bag, briefcase or container etc., being carried by the suspect.
- ▶ inextricable connection test cannot be applied .
- ▶ The word "person" would mean a human being with appropriate coverings and clothings and also footwear.

Krishan Kumar vs State of Haryana 2014 (7) SCALE 467

- ▶ The accused, who was having a bag in his hand, was spotted by a police party near bus station.
- ▶ He tried to conceal his presence by sitting near water tank on pretext of passing urine.

- ▶ He was apprehended on suspicion and a notice under Section 50 was served on him; he desired that his bag be searched in presence of a gazette officer.
- ▶ One Chet Ram Tahsildar cum Executive Magistrate was called on the spot and in his presence search was conducted in which 5kgs of opium was recovered from his bag.
- ▶ SC held that the enquiry whether Chet Ram was discharging functions of a Magistrate was uncalled for as in this case recovery was from the bag held by the accused and not from his personal search.

Dilip and Anr. v. State of Madhya Pradesh (2007) 1 SCC 450

- ▶ On the basis of information, search of the person of the accused was conducted.
- ▶ Nothing incriminating was found on their person.
- ▶ But on search of the scooter they were riding, opium contained in plastic bag was recovered.
- ▶ Since the person of the accused was also searched hence it was held that Section 50 was applicable.

Union of India v. Shah Alam

(2009) 16 SCC 644

- ▶ Heroin was first recovered from the bags carried by the accused persons.
- ▶ Thereafter, their personal search was taken but nothing was recovered from their person.
- ▶ Following *Dilip*, it was held that since the provisions of Section 50 of the NDPS Act were not complied with at the time when “person” of the accused were searched, therefore the accused persons were entitled to acquittal.

Babubhai Odhavji Patel vs Gujarat

AIR2006SC102

- ▶ D.I.G. had instructed the PSI that intoxicant materials were being transported illegally from the States of Rajasthan and Uttar Pradesh and the vehicles had been passing through Banaskantha district.
- ▶ It was held that the information was very general in nature and hence not required to be recorded under Section 42.

- ▶ It was held that only specific information alone need be recorded by the officer empowered to conduct a search.
- ▶ In this case PSI and the members of the patrol team were doing the usual patrol duty and they incidentally came across the tanker lorry in question and on search recovered the contraband substance from the vehicle.
- ▶ As regards violation of Section 50 ,The apex Court held that It is important to note that no narcotic substance was recovered on the person of the appellant. Even if it is assumed that a search was made on the person of the accused no evidence in that behalf was made use of by the prosecution to sustain the charge against the appellant.

Jarnail Singh vs State of Punjab

AIR 2011 SC 964

- ▶ Accused tried to run away on seeing the police petrol Party. He was carrying a bag in his hand.
- ▶ On suspicion he was apprehended and search was conducted. 1 Kg and 750 grs opium was recovered from his bag but nothing incriminating was found on personal search.
- ▶ The argument that the safeguards provided under Section 50 were not complied with, the SC relying on Kalema Thumba's case and Pawan Kumar's case held that Section 50 was not attracted at all in this case.

State Of Rajasthan vs Parmanand

AIR2014SC1384

(28 February, 2014)

- ▶ Two persons were nabbed on prior information that they would handover opium to a drug smuggler.
- ▶ Respondent Parmanand was holding a gunny bag in his hand.
- ▶ They were served with a notice that they had a right to get themselves searched in the presence of any nearest Magistrate or any gazetted officer or in the presence of Superintendent J.S. Negi of the raiding party.

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- ▶ On this notice, appellant Surajmal gave consent for himself and for appellant Parmanand for being searched by SI Qureshi in the presence of Superintendent J.S. Negi.
- ▶ On search Opium was recovered from the bag of Parmanand.
- ▶ If merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application.
- ▶ But if the bag carried by him is searched and his person is also searched, Section 50 will have application no matter whether any thing was recovered from the personal search or not.

It was held that Section 50 was breached inasmuch as a third option of being searched in presence of Superintendent Negi was given.

- ▶ 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.
- ▶ Section 50 was also breached because both the accused persons were not given individual notice. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right.
- ▶ Respondent No 2 could not have given consent for and on behalf of Respondent No.1. Both of them should have given their individual consent.