



CRA-S-1725-SB-2009

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

**CRA-S-1725-SB-2009  
Reserved on : 14.05.2025  
Pronounced on : 21.05.2025**

**Harmesh Lal @ Meshi****...Appellant****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. H.K. Arora , Advocate  
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. The instant appeal is preferred against the judgement and order of sentence dated 20.04.2009 passed by learned Special Judge, Jalandhar in FIR No. 55 dated 03.04.2005 registered at Police Station Phillaur under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for short), whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs. 500/- and in default of payment of fine, to further undergo simple imprisonment for a period of three months.

**FACTUAL BACKGROUND**

2. The facts of the prosecution case, tersely put, are that on 03.04.2005, ASI Balkar Singh, along with other police officials, was en route from Garha to Baba Panj Peer, Saifabad. Ahead of Village Garha, PW Harbhajan Singh joined the police party as an independent witness. They observed one person sitting on two gunny bags, who, upon questioning, disclosed his name as Harmesh Lal. The Investigating Officer informed him of his legal right to be searched before a



Magistrate or a Gazetted Officer. However, the accused reposed confidence in the Investigating Officer and consented to be searched by him, which was recorded vide consent memo. The search led to the recovery of poppy husk of 25 kg in each bag out of which, two samples of 250 grams each were drawn from each bag. The case property and samples were sealed with the mark 'BS', documented via recovery memo Ex. PB, and a sample seal was handed to HC Karnail Singh. A ruqa (Ex. PE) was sent to the police station, leading to registration of FIR Ex. PE/1. The rough site plan (Ex. PF), arrest memo (Ex. PD), and personal search memo (Ex. PC) were prepared. Upon returning to the police station, the SHO Om Parkash added his seal 'OS' and deposited the property with the MHC. On 05.05.2005, the case property was produced before the Illaqa Magistrate by Investigating Officer and then redeposited. After completing the investigation and receiving the Chemical Examiner's report (Ex. PK), a challan under Section 173 Cr.P.C. was filed. Charge under Section 15 of the NDPS Act was framed against the appellant, to which the appellant pleaded not guilty and claimed trial.

3. In order to prove its case, prosecution examined as many as six witnesses. All the incriminating evidence was put to the appellant and his statement under Section 313 Cr.P.C. was recorded, wherein he pleaded false implication. However, the appellant did not lead any evidence in his defence. After minutely scrutinizing all the material available on the record, the learned trial Court held the appellant guilty and sentenced him as discussed above.

### **CONTENTIONS**

4. Learned counsel for the appellant, inter alia, contends that the impugned judgment is liable to be set aside on account of material contradictions between the statements of PW2 ASI Karnail Singh and PW3 SI Balkar Singh concerning the



presence of independent witness Harbhajan Singh. While PW3 deposed that Harbhajan Singh joined the police party per chance as an independent witness, PW2 categorically stated that no individual met the police party between Garha and Saifabad, except the accused. Significantly, Harbhajan Singh was never produced before the trial Court to corroborate his alleged role as an independent witness. There is no evidence on record to indicate that he was won over by the accused, which could justify his non-production. Moreover, the statement of Harbhajan Singh under Section 161 Cr.P.C. does not reflect that the appellant was ever given the option of being searched before a Gazetted Officer or a Magistrate. It is also silent on whether the police arranged for scales and weights at the scene. Although PW3, SI Balkar Singh, stated during his examination-in-chief that the appellant was informed of his legal right regarding the search, he admitted during cross-examination that no consent memo was prepared by him. Such inconsistencies and omissions materially affect the credibility of the prosecution case and cannot be brushed aside as minor lapses.

5. On the other hand, learned State counsel argues that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference by this Court is warranted. Additionally, there is nothing on record to suggest that the appellant may have been falsely implicated.

#### **OBSERVATIONS AND ANALYSIS**

6. Having heard learned counsel for the parties and after thoroughly perusing the record of the case, it transpires that the prosecution's version is seriously undermined by inconsistencies between PW2 ASI Karnail Singh and PW3 SI Balkar Singh concerning the manner in which Independent witness



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Harbhajan Singh came to be part of the police party. While PW3 states that Harbhajan Singh joined by chance, PW2 asserts that no person met them on the way except the accused. Crucially, Harbhajan Singh was never produced as a witness and no cogent explanation was provided for his non-examination. The Hon'ble Supreme Court in *Krishan Chand Vs. State of H.P., AIR 2017 SC 3751* has laid down the ratio that the failure of the Investigating Officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution. The Hon'ble Supreme Court in *Gorakh Nath Prasad Vs. State of Bihar, 2018(1) R.C.R. (Criminal) 108* has acquitted the accused while holding that the case of the prosecution cannot be said to be proved when it is entirely based upon the statements of the official witnesses. Also held in *State of Rajasthan v. Daulat Ram [(1980) 3 SCC 303]*, failure to produce a material witness, without sufficient reason, casts doubt on the prosecution's case. This lapse attracts an adverse inference. Hence, the prosecution's failure to produce independent witness Harbhajan Singh and the inconsistencies in witness accounts therefore shake the foundation of its case.

7. Learned counsel for petitioner has forcefully argued that provisions of the Section 50 of NDPS Act were not complied with, as the appellant was not made aware of his legal right to be searched before a Gazetted Officer or a Magistrate. The above contention of the learned counsel for the appellant, when tested on the anvil of the facts and circumstances of the present case, finds merit. Undisputedly, the alleged contraband was recovered from possession accused while he was sitting on two gunny bags and upon searched led to recovery of 50kg poppy husk. Therefore, the rigor of Section 50 of the NDPS Act would be made applicable.



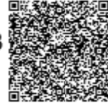
8. A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan v. Parmanand and another (2014) 5 SCC 345*** speaking through Justice Ranjana P. Desai has held as under:-

*"15. Thus, 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 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in the light of the judgements of this Court mentioned in the preceding paragraphs Section 50 of the NDPS Act will have application."*

A three Judge Bench of the Hon'ble Supreme Court in ***S.K. Raju alias Abdul Haque alias Jagga v. State of W.B. (2018) 9 SCC 708*** speaking through Justice Dr. D.Y. Chandrachud has held as under:-

*"20. The question which arises before us is whether Section 50 (1) was required to be complied with when charas was recovered only from the bag of the appellant and no charas was found on his person. Further, if the first question is answered in the affirmative, whether the requirements of Section 50 were strictly complied with by PW 2 and PW 4.*

*21. As evidenced by Ext. 3, a first option was given to the appellant. PW 2 informed him that it was his legal right to be searched either in the presence of a Magistrate or in the presence of a gazetted officer. The appellant was then asked to give his option by indicating whether he wanted to be searched by a Magistrate or a gazetted officer. The appellant indicated that he wanted the search to be carried out in the presence of a gazetted officer. When PW 4 arrived, he was introduced to the detainee as a gazetted officer. As evidenced by Ext. 4, PW 4*



*then gave the appellant a second option. He inquired of him again, whether he wanted to be searched in the presence of a gazetted officer or in the presence of a Magistrate. The appellant reiterated his desire to be searched in the presence of a gazetted officer. Before the search of the appellant commenced, the gazetted officer asked the appellant whether he wanted to search PW 2 before his own search was carried out by PW 2. The appellant agreed to search PW 2 before the latter carried out his search. On conducting the search, only personal belongings of PW 2 were found by the appellant. On the search of the appellant in the presence of the gazetted officer, a biscuit-coloured jute bag was recovered from the appellant, and Rs 2400 cash in the denomination of 24 notes of Rs 100 each was found in the left pocket of the appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish/deep brown colour weighing 1.5 kg was recovered. The sheets were tested and were found to be charas.*

*22. PW 2 conducted search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW 2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, Section 50 would be attracted in this case. Accordingly, PW 2 was required to comply with the requirements of Section 50 (1). As soon as the search of a person takes place, the requirement of mandatory compliance with Section 50 is attracted..."*

In the present case, there is not an iota of evidence produced on record by the prosecution to prove that the accused-appellant was made aware of his right to be searched by a Gazetted Officer or a Magistrate at the time of his personal search and that an offer of search was given to him as enshrined under *Section 50* of the NDPS Act. Further, PW3 SI Balkar Singh himself admitted during cross-examination that no such memo was prepared, thereby violating the mandatory



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safeguard prescribed under Section 50 of the NDPS Act. Given the absence of a written or reliable oral record of compliance, the mandatory safeguard under Section 50 stands violated and these rulings reaffirm that non-compliance with Section 50 is a substantive defect that vitiates the recovery and warrants acquittal.

9. In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt. The contradictions in the testimonies, procedural lapses, and non-compliance with mandatory statutory provisions under the NDPS Act cumulatively entitle the appellant to the benefit of doubt.

**CONCLUSION**

10. Accordingly, the present appeal is allowed and the judgment of conviction and order of sentence dated 20.04.2009 passed by learned Special Judge, Jalandhar are hereby set aside. The appellant, namely Harmesh Lal is acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged.

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

12. The case property, if any, may be dealt with as per rules, after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**Reserved on: 14.05.2025**

**Decided on: 21.05.2025**

*Ajay Goswami*

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No