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2024:PHHC:126264-DB



In the High Court of Punjab and Haryana at Chandigarh

1. **CRM-M No. 26565 of 2021**
Reserved on: 19.9.2024
Date of Decision: 20.9.2024

Ravinder @ Ravi @ Ravinder PalPetitioner

Versus

State of HaryanaRespondent

2. **CRM-M No. 29788 of 2021**

Gurpreet @ GopiPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. L.S.Sekhon, Advocate and
Ms. Nitika Sekhon, Advocate
for the petitioner (in CRM-M-26565-2021).

Mr. Aman Dhir, Advocate
for the petitioner (in CRM-M-29788-2021)

Mr. Ankur Mittal. Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab with
Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since a common question of law involves in both the petitions (supra), therefore, the said question of law is amenable to be answered through a common verdict being made thereons.

2. The present reference becomes generated from the order pronounced by this Court on 4.8.2021 upon CRM-M-26565-2021 and another connected case (supra), whereby the petitioners were granted

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regular bail. However, while disposing of the above petitions, the learned co-ordinate Bench of this Court has passed the following order:-

“7. Before parting this order, this Court is of the opinion that the provisions of Section 50 of the NDPS Act, would stand complied with once the empowered police officer apprises the apprehended person of his right to be searched in the presence of a Magistrate or a Gazetted Officer. In case, such person opts to be searched in the presence of a Gazetted Officer and a Magistrate and such Gazetted Officer/Magistrate comes to the spot, he at best, is required to introduce himself being a Gazetted Officer or a Magistrate and apprise himself of the facts by generally questioning the police officials or the apprehended person but is not required to extend fresh offer in terms of Section 50 of the NDPS Act. In case Section 50 of the NDPS Act, is to be interpreted in this manner that even the Gazetted Officer and Magistrate is required to give a fresh option then it will be an endless exercise inasmuch as the accused may every time gave his option to be searched from some other officer.

8. However, in Joginder Singh's case (supra), judgment passed by a Coordinate Bench a different opinion has been expressed which for the sake of ready reference reads as follows:-

“xx xx xx xx

(i) The mandatory guidelines, which should be followed by the Investigating Officers, are as under: -

xx xx xx xx

The Gazetted Officer or Magistrate before whom any such person is brought shall also comply with the provision of Section 50 of the NDPS Act by apprising the person of his/her right.

xx xx xx xx ”

9. The said matter needs to be examined by a Larger Bench in view of a different opinion held by this Bench. The matter, as such be referred to Hon'ble the Chief Justice for referring the



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matter, if same deemed appropriate to a Larger Bench to settle the aforesaid controversy.”

3. The question of law which is required to be answered relates to-

Whether a Gazetted Officer or a Magistrate before whom any such person is brought, or when such a Gazetted Officer or a Magistrate proceeds to the crime site, is also then required to comply with the provisions of Section 50 of the NDPS Act by apprising the accused of his/her right, relating to his/her being asked to re-furnish his/her fresh consent for thus his/her personal search becoming carried in the presence of the Gazetted Officer or the Magistrate ?
4. Since contra postures are taken by two different Benches, about the respective necessity and unnecessary, qua upon the accused appearing before a Gazetted Officer or a Magistrate or upon the Gazetted Officer or the Magistrate, thus proceeding to the crime site hence appertaining to the takings then of a fresh consent from the accused concerned, rather for his/her being personally searched. Resultantly, the said contra postures are required to be resolved.
5. For the reasons to be assigned hereinafter, this Court is of the firm view that in case, the investigating officer concerned, in terms of the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), provisions whereof become extracted hereinafter, makes an intimation to the accused at the crime site, about the statutory right invested in him/her, to ensure the making of his/her personal search in the presence of a Gazetted Officer or a Magistrate, whereupon, on his/hers refusing to accord consent for his/her personal search being made by

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the investigating officer concerned, rather proceeds to ask for his/her personal search being made by a nearest Gazetted Officer or by a nearest Magistrate, thereupon, the consent for the relevant purpose, thus is neither required to be elicited, nor is required to be purveyed.

50. Conditions under which search of persons shall be conducted.—

(1) *When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*

(2) *If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).*

(3) *The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.*

(4) *No female shall be searched by anyone excepting a female.* (5)

When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) *After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.*

6. Resultantly, when the Gazetted Officer or the Magistrate either proceeds to the crime site for the relevant purpose or upon the accused becoming produced before the nearest Gazetted Officer or before the nearest Magistrate, for his/her being personally searched before the aforesaid. Consequently, in both the situations (supra), there is no necessity of a fresh



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consent becoming obtained from the accused, thus appertaining to his personal search becoming carried by the officer concerned or by the Magistrate concerned.

7. The reason for making the above conclusion ensues, from a profound insightful reading becoming made of the supra extracted relevant statutory provisions. In the said statutory provisions, there occurs a mandate upon the investigating officer, to in case he intends to make a personal search of the accused, thus for therebys his attempting to unearth from the said made personal search either the psychotropic substance concerned, or the narcotic substance concerned, thereupons, he becomes statutorily interdicted to do so, unless as declared in the statutory provisions, he makes a prior intimation to the accused, that he/she yet, has a right for his/her personal search being carried in the presence of the nearest Gazetted Officer or in the presence of the nearest Magistrate.

8. The necessities of awakening (supra) being brought to the accused about the investment of the said statutory right, rather in him or her thus become anchored upon the statutory provisions (supra). Since the said statutory provisions are cast in a mandatory language, therebys strict compliance thereto is required to be made by the investigating officer concerned. In case there is any departure therefrom, thus the search proceedings resulting in the making of recoveries of the psychotropic substance or of the narcotic substance concerned, thus on the personal search becoming made of the accused by the investigating officer at the crime site, but necessarily would become completely vitiated, wherebys the accused would become entitled to a verdict of acquittal.

9. Therefore, for ensuring that the makings of personal search(es)



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of the accused, at the crime site by the investigating concerned officer, rather remains unvitiating, thus for want of compliance qua the statutory necessity (supra) becoming made by the investigating officer concerned. Resultantly, the investigating officer concerned, but is under an preemptory statutory diktat to, after making an intimation to the accused, thus in the consent memo about his/her becoming invested with the statutory right to become personally searched in the presence of the nearest Gazetted Officer or the nearest Magistrate, thus elicit the apposite signed consent of the accused. In the event of the accused refusing to purvey his/her consent for his/her personal search becoming done at the crime site by the investigating officer concerned. Contrarily, rather upon the accused evincing his/her signed consent for his/her becoming personally searched in the presence of the Gazetted Officer or the Magistrate, thereupon it becomes incumbent upon the investigating officer concerned, to without unnecessary delay take the accused for his/her personal search being made, thus either before the nearest Gazetted Officer or before the nearest Magistrate.

10. Since the said refusal of the accused to get his/or personal search done at the crime site by the investigating officer concerned, results in an incumbent statutory duty becoming made upon the investigating officer rather to then promptly take the accused to the nearest Gazetted Officer or before the nearest Magistrate. Moreover, in case the nearest Gazetted Officer or the nearest Magistrate promptly proceeds to the crime site. Therefore, in both the above situations rather when underneath the consent memo the accused has under his/her signature, thus earlier preferred to get his/her personal search done in the presence of the nearest Gazetted Officer or the nearest Magistrate. In sequel, when the personal search of the



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accused is to be made as such in the presence of a Gazetted Officer or before the Magistrate, when therebys the statutory safeguard (supra) against the search becoming vitiated, upon, yet the investigating officer proceeding to make a personal search of the accused, but becomes both furthered as well as obviates vitiations being done to the personal search. As a naturally corollary thereto, when compliance (supra) becomes earlier done to the statutory safeguards (supra) rather upon the accused's asking his/her, thus becoming promptly taken, by the investigating officer, hence for the relevant purpose before the nearest Magistrate or before the nearest Gazetted Officer. Resultantly therebys to the considered mind of this Court, there is no requirement of the accused being re-asked by the said Gazetted Officer or by the Magistrate to re-render his/her signed consent for his/her personal search being made by the nearest Gazetted Officer or by the nearest Magistrate. If there is any re-rendition of a signed consent rather for the relevant purpose before the supra, therebys the very purpose of the accused refusing to cause his/her signed consent qua his/her personal search becoming made at the crime site by the investigating officer concerned, thus would become completely frustrated, besides thus the apposite signed consent qua his/hers personal search being made by the nearest Gazetted Officer or the nearest Magistrate, but would necessarily also become negated.

11. Even otherwise, the repetition of purveying of the apposite signed consent, as becomes earlier rendered rather by the accused but at the crime site to the investigating officer, thus appertaining to his/her personal search being done in the presence of the nearest Magistrate or in the presence of the nearest Gazetted Officer, thus would but be most idle and



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unnecessary. The reason for so concluding becomes firmly etched, on an insightful reading becoming made of the statutory provisions (supra), wherein, it becomes unraveled qua theretos only strict compliance becomes ordained to become employed by the investigating officer vis-a-vis the statutory diktat, thus appertaining to the accused becoming made aware of the statutory right invested in him/her to seek his/her personal search either before him or before the nearest Magistrate or the nearest Gazetted Officer. In case, there is/are addition(s) or extension(s) to the said categorical and explicit language carried in the statutory provisions (supra), so as to even cover a situation, whereby there is yet a re-necessity for re-rendition of a signed consent rather for the relevant purpose rather even before the supra, thereby this Court would be impermissibly adding onto the express statutory language such mandates which do not exist therein. Since the statutory mandates existing in a penal statute rather to be strictly construed. Moreover, when the said addition would be against the innate spirit and nuance of the statutory provisions (supra). Resultantly any additions to the above extent to the explicit statutory provisions would result in impermissible judicial adventurism whereby this Court would be impermissibly legislating.

12. Conspicuously also the said statutory provisions are to be stricto sensu construed. Resultantly, when upon making stricto sensu constructions of the statutory provisions (supra), thereupon with there not occurring therein any provision about the necessity of any repetitive signed consent becoming elicited, from the accused, even by the nearest Gazetted Officer or the nearest Magistrate wherebefore whom, the accused is taken by the investigating officer, rather upon the accused earlier refusing to get



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his/her personal search becoming made at the crime site by the investigating officer. Therefore, since this Court cannot travel beyond the contours of the statutory provisions which however, for the reasons (supra) does not require any signed re-consent being obtained by the accused, when he appears before the nearest Gazetted Officer and/or before the nearest Magistrate.

13. In sequel, reiteratedly when there is a statutory bar, against the re-taking of the apposite signed consent from the accused by the nearest Magistrate or by the nearest Gazetted Officer, thus wherebefore whom the accused is produced by the investigating officer rather for the supra making the personal search of the accused. As such, the stand taken by the learned Single Judge of this Court about the above unnecessary is affirmed, whereas, the stand to the contrary taken by the learned Co-ordinate bench of this Court, is respectfully disagreed.

Final order

14. In view of the observations, the reference stands answered accordingly.

15. This Court appreciates the worthy legal assistance(s) purveyed to this Court by all the counsels concerned.

16. A photocopy of this order be placed on the file of another connected case.

**(SURESHWAR THAKUR)
JUDGE**

**(SUDEEPTI SHARMA)
JUDGE**

**September 20th, 2024
Gurpreet**

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