

NATIONAL JUDICIAL ACADEMY BHOPAL



REPORT ON

CRITICAL ANALYSIS OF SECTION 41, 42 AND 50 OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN THE LIGHT OF RELEVANT JUDGMENTS: PROCEDURAL SAFEGUARDS

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TABLE OF CONTENTS

- I. Introduction to the Narcotics Drug and Psychotropic Substances Act, 1985
- II. Critical Analysis of Section 41, 42 and 50 of the Act
- III. Relevant Judgments
- IV. Memorial of Mock Trial
- V. Bibliography

The Narcotics Drugs and Psychotropic Substances Act, 1985

Introduction: Overview

The Act is commonly known as NDPS Act and came into force on 14th November 1985. The narcotic drugs and psychotropic substances have medicinal and scientific value for which they have been used in India since decades. But with the passage of time and development, the practice turned into illicit drug trafficking. Also, India is signatory to UN Conventions on Narcotic Drugs which prescribes for the controlled and limited use of these narcotic drugs and psychotropic substances. Therefore, the legislation is framed with the objective of using these narcotic drugs and psychotropic substances in controlled manner for medicinal and scientific purpose without in contravention to the obligations to UN Conventions.

The NDPS Act regulates and controls the abuse of drug trafficking through its stringent provisions. It empowers the competent authority for the supervision of the operation related to narcotics drugs and psychotropic substances.

The NDPS Act prescribes stringent punishment. Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. This would mean that a balance must be struck in. The provisions contained in Chapter V, intended for providing certain checks on exercise of powers of the authority concerned, are capable of being misused through arbitrary or indiscriminate exercise unless strict compliance is required.

Critical analysis of Section 41, 42 and 50 of the Narcotic Drugs and Psychotropic Substances Act

Section 41: Power to issue warrant and authorization

This section can be divided into parts- first, power of issue of warrant and authorization to certain class of magistrate, gazetted officer and subordinate officers authorized by gazetted officers. Second, writing down the secret information.

It empowers a Metropolitan Magistrate or a magistrate of the first class or any Magistrate of the second class to issue a warrant for the arrest of any person whom they have reason to believe to have committed any offense punishable under the NDPS Act or for search of any building, conveyance or place in which they have reason to believe that any narcotic drug or psychotropic substance in respect of which an offence punishable under this Act has been committed, is kept or concealed.

It empowers gazetted officer of the department of central excise, narcotics, revenue intelligence or any department of Central Government including para- military forces or any department of State Government by special order of Central Government or in case of State by State Government if he has reason to believe from personal knowledge or information given by any person after writing down the information that any person has committed any offence punishable under this Act or any document or article which may furnish evidences of the commission of any offence punishable under this Act.

The gazetted officer may authorize any officer subordinate (superior to rank of peon, constable or a sepoy) to conduct search, seizure of any building, conveyance and arrest of any such person whom he has reason to believe of commission of any offence punishable under this Act.

All Magistrates, empowered gazetted officers and authorized subordinate officers enjoy all the powers of an officer acting under Section 42 of the Act.

Section 42: Power of entry, search, seizure and arrest without warrant or authorization

This section can be divided into two parts. First is the power of entry, search, seizure and arrest without warrant or authorization as contemplated under sub-section (1) of section 42. Second is reporting of information reduced to writing to the higher officer inconsonance with sub- section (2) of the Section.

Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so after recording his reasons of belief.

The proviso to Sub-section (1) of Section 42 lays down that if the empowered officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief.

An officer writing down the information under sub- section (1) and an officer recording his reason of belief under proviso shall send a copy to their immediate superior officer.

Section 50:- Conditions under which search of persons shall be conducted.

Any Officer who is authorized to search under section 41, 42 and 43 shall without any delay take such person to the nearest magistrate or nearest gazetted officer of any departments of excise, customs, narcotics, revenue intelligence, or any other central or state department.

If the gazateed officer or magistrate cannot sees reasonable grounds for search then the person shall be released immediately otherwise should be directed to search. Female can only be searched by female. If in case it is not possible for officer to take person to nearest magistrate or gazateed officer then he can proceed search by himself under section 100 of Cr.P.C. But within 72 hours, officer has to write a reason of his belief of conducting research and send copy of it to immediate superior officer.

Sr. No	Name of the Case	Facts of the Case and Issues	Remarks (SC/HC)
01.	<p data-bbox="318 306 521 499">Namdi Francis Nwazor v. Union of India</p> <p data-bbox="318 579 516 667">[(1998) 8 SCC 534]</p> <p data-bbox="342 747 496 831">Decided on: 27.02.1996</p> <p data-bbox="331 894 508 978">Judges: A.M. Ahmadi, S.V. Manohar and B.N. Kirpal</p>	<p data-bbox="565 306 1002 1713">A Nigerian National possessing two carry bags was leaving India by flight. At custom clearance, the investigating team on suspicion searched his bag in which nothing incriminating was found. But it was revealed that he was also carrying a bag which was already loaded to the aircraft. The bag was called to custom counter. On conducting search, it was found in possession of contraband articles. The accused was convicted under section 21, 23 and 28 of NDPS Act by trial court. An appeal was made to the High court that there was non-compliance of section 50 of the Act which is fatal to the prosecution. High Court dismissing the petition upholds the decision of the trial court. Appeal by special leave was preferred by the appellant for non-compliance of section 50 of the Act.</p>	<p data-bbox="1024 306 1432 453">Supreme Court upheld the decision of High Court and trial court.</p> <p data-bbox="1024 527 1432 1881">Supreme Court note down two important points (i) no possession of bag in which incriminating articles were found and (ii) as per section 50(1) and (2), no offer is being given to the accused for conducting search in front of magistrate and gazette officer. It stated that section 50 applies to cases of search of any person and not search of any article. To make it clear it stated, as per the provision a female can only be searched by female but such restriction would not be necessary for searching the goods of female lying at a distant place at the time of search. Hence, when the article lying at different place brought to the place where accused is found and incriminating articles found on search, it cannot hold</p>

			<p>requirement of section 50 of the Act, The facts of the case does not attract section 50 of the Act. Therefore, no question of non compliance and no fatal to the prosecution. Supreme Court dismissed the petition by upholding decision of High Court.</p>
02.	<p>State of Punjab v. Balbir Singh</p> <p>[AIR1994 SC1872]</p> <p>Decided on: 01.03.1994</p> <p>Judges: S.R. Pandian and K. Jayachandra Reddy.</p>	<p>In this bunch of appeals by the State of Punjab, the Police Officer had, in the normal course of their investigations under Cr.P.C. carried out searches and effected seizures and arrest on a reasonable suspicion that or cognizable offences had been committed, in relation to narcotics drugs, punishable under the NDPS Act, 1985. The trial courts in these cases acquitted the accused on the ground that the arrest, search and seizure were in violation of some of the relevant and mandatory provisions of the NDPS Act. The High Court declined to grant leave to appeal against the said order of acquittal. The questioned raised in these appeals is whether searches,</p>	<p>The Supreme court dismissed all the appeals filed by Punjab High Court and made the following conclusion on deciding these appeals.</p> <p>A combined reading of Sections 41, 42 43 and 51 of the NDPS Act and Section 4 Cr. PC regarding arrest and search under Sections 41, 42 and 43, the provisions of Cr. PC namely Sections 100 and 165 would be applicable to such arrest and search. Consequently the Principles laid down by various courts as discussed above regarding the irregularities and illegalities in respect of arrest and search would equally be applicable to the arrest and search under the NDPS Act also depending</p>

		<p>seizures and arrests conducted without conforming to the provision of the NDPS Act were illegal and consequently the court proceedings for conviction were vitiated.</p>	<p>upon the facts and circumstances of each case. If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr. PC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the</p>
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			<p>investigation in accordance with the other provisions of the NDPS Act.</p> <p>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. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. only empowered officers or duly authorized officers as enumerated in Sections 41(2) and 42(1) can act under the precisions of the NDPS Act. On prior information, the empowered officer or authorized of officer while acting under Section 41(2) or 42 should comply with the provisions of Section 50 before the search of the person</p>
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			is made an such person should be informed that if he so requires, he shall be produced before a gazetted officer or a magistrate as provided there under. Failure to inform the person to be searched and if such person so requires, failure to take him to the gazetted officer or the magistrate, would amount to noncompliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. All appeals dismissed by the Supreme court.
03.	<p>Mohinder Kumar v. The State, Panaji, Goa</p> <p>[AIR 1995 SC 1157]</p> <p>Decided On: 20.01.1995</p> <p>Judges: A.M. Ahmadi, N.P. Singh and S.V.</p>	The police office along with his team was on patrolling duty, reached Out- post at village and parked his jeep and move toward the house. He noticed two persons sitting in the verandah of that house, but as they saw him and the police party, they rushed in their house. This causes suspicion and the sub inspector and police party warned the accused to stay at their place and conducted search after calling the panch witnesses. On search, one plastic bag was found in lying by	The Supreme Court set aside the conviction ordered by trial court and High Court. In the instant case, the facts show that he accidentally reached the house while on patrolling duty. There was not on any prior information but he purely accidentally stumbled upon the offending articles and not being the empowered person. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of

	<p>Manohar.</p>	<p>the accused side containing two polythene packets of charas like substance. Samples were taken and sealed and send to the Public Analyst Laboratory. The remaining packet was sealed and seized. The trial court convicted the accused. The High Court upheld the decision of trial court. Aggrieved by the decision an appeal was preferred to the Supreme Court to set aside the conviction as there was non-compliance of Section 41(2), 42 and 50 of the NDPS Act.</p>	<p>narcotic drugs and sent for panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. Under Section 42(1) proviso, if the search is carried out between sun set and sun rise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realizing that the accused persons were in possession of charas. He also did not forward a copy of the ground to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to Section 42(1). Also at the time of conducting search, he did not inform the accused about his right to be searched before magistrate or gazetted officer under section 50 of the Act. The Supreme court set aside the conviction and sentence of the accused and the accused was acquitted</p>
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			from all the charges framed against him. Appeal was allowed.
04.	<p>Sayar Puri</p> <p>v.</p> <p>State of Rajasthan</p> <p>[AIR 1998 SC 3224]</p> <p>Decided On: 02.09.1998</p> <p>Judges: G.T. Nanavati and S.P. Kurdukar</p>	<p>The accused was sitting on public bench on road. The police was on patrolling duty and on suspicion, issue the notice under section 50 of the Act to be searched in front of magistrate or gazetted officer. Accused denies his right and wish to be searched by police. The police call the panch witness and then search was conducted. The accused was found in possession of opium. Relying on the evidences the trial court convicted the person under section 17 of the Act. The High Court upheld the decision of trial court. Aggrieved by the decision, an appeal was preferred to the Supreme Court to vitiate the conviction as there was non-compliance of mandatory provisions like 42 and 50 of the Act and no site plan was prepared by the police.</p>	<p>The Supreme Court upheld the decision of trial court and High Court.</p> <p>Section 42 empowers the officer to conduct search in building, conveyance and enclosed place. But in the instant case, it is examined by police officers and panch witnesses that an accused was sitting on the bench on road, which is public place. Therefore, neither the procedure under Section 42(2) of the Act was required to be followed nor the site plan was required to be prepared. As far as Section 50 is concerned it is clear by examining the evidences that an accused was offered to be searched as per the provision but he himself denies. Section 50 was strictly complied. No infirmity was found in decision of High Court by upholding the decision of Trial Court. Appeal</p>

			was dismissed.
05.	<p>State of Punjab</p> <p>V.</p> <p>Baldev Singh</p> <p>[AIR1999SC2378]</p> <p>Decided on: 21.07.1999</p> <p>Judges: Dr. A. S. Anand,</p>	<p>On 15.07.1997, bunch of appeals/ special leave petitions was placed before a two Judge Bench, it was noticed that there was divergence of opinion between different Benches of this Court with regard to the ambit and scope of Section 50 of and in particular with regard to the admissibility of the evidence collected by an investigating officer during search and seizure conducted in violation of the provisions of Section 50 of NDPS Act. Following questions of law fall for determination:</p> <p>(i) Is it mandatory requirement of section 50 of the NDPS Act, 1985, that when an officer, duly authorized under Section 42 of the Act, is about to search a person he must inform him of his right under Sub-section (1) thereof of being liken to the</p>	<p>The Supreme Court made the following observation and after discussion made the following conclusions.</p> <p>(i) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the concerned person of his right under Sub-section (1) of Section 50 of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.</p> <p>(ii) That failure to inform the concerned person about the existence of his right to be searched before a Gazetted Officer or a Magistrate would cause prejudice to an accused.</p> <p>(iii) That a search made, by an empowered officer, on prior information, without informing the person of his right that, if he so requires, he shall be</p>

		<p>nearest Gazetted Officer or nearest Magistrate for making the search?</p> <p>(ii) If any search is made without informing the person of his such right would the search be illegal even if he does not of his own exercise his right under Section 50(1)? And</p> <p>(iii) Whether a trial held in respect of any recovery of contraband articles pursuant to such a search would be void ab initio?</p>	<p>taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.</p> <p>(iv) the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is</p>
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			<p>contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.</p> <p>(v) we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but, hold that failure to inform the concerned person of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.</p>
06.	<p>Joseph Fernandez v. State of Goa</p> <p>[AIR 2000 SC 3502]</p> <p>Decided On: 05.10.1999</p> <p>Judges: K.T. Thomas, A.P.</p>	<p>The police officer served the notice to an accused to be searched before magistrate or gazetted officer to which an accused had not favourably reciprocated. The trial court convicted the accused under NDPS Act. Appeal was made to the High Court as there was no strict compliance of Section 50 of the Act. The High Court upheld the decision of trial court. An Appeal was preferred by</p>	<p>The Supreme court upheld the decision of trial court and High Court.</p> <p>The officer has served the appellant an offer to be searched before magistrate or gazetted officer which an appellant had not favourably reciprocated. The Supreme Court stated the said offer is a communication about the information that appellant has a right to be searched so. It must</p>

	Mishra and S.S.M. Quadri.	special leave.	be remembered that the searching officer had only Section 50 of the Act then in mind unaided by the interpretation placed on it. Even then the searching officer informed him that "if you wish you may be searched in the presence of Gazetted Officer or a Magistrate". This according to us is in substantial compliance with the requirement of Section 50. No violation of section 50 of the Act and no question of non-compliance of mandatory provision. Appeal was not allowed.
07.	Abdul Rashid Ibrahim Mansuri V. State of Gujrat [AIR 2000 SC 821] Decided on: 01.02.2000 Judges: Dr. A.S. Anand, K.T.	The police officer received the information that one Iqbal Syed Husen was trying to transport Charas up to Shahpur in an auto-rickshaw. He along with his team reached to the main road and sighted the auto rickshaw driven by the appellant. They stopped it and checked it and found four gunny bags loaded in the vehicle. They took it to the police station where search is conducted and 10 packets of charas were found in	Supreme Court set aside the decision of High Court and decision of trial court is restored. No doubt, when the appellant admitted that narcotic drug was recovered from the gunny bags stacked in the auto-rickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained

	<p>Thomas and S. Rajendra Babu.</p>	<p>the possession. The case was filed against the appellant. On investigation it was revealed that the consignment was loaded in auto- rickshaw by two persons namely, Iqbal Syed Husen and Mahaboob Rasal Khan who were found absconded. The Auto-rickshaw driver plea that he has no knowledge of content that he was carrying. Burden of proof is on accused. As per the section 35 of the Act, when there is presumption of culpable mental state, it is the standard of proof and a defense for the accused. The Trial Court acquitted the accused as, submission of oral evidence showing that real culprits were other, a non-recording of vital information collected by police and no evidence of connivance between appellant and real culprits. Appealed was made to High Court by state of Gujrat. The decision of Trial court was set aside and accused was convicted under section 20(b)(ii) and sentenced for 10 years rigorous imprisonment and a fine of 1</p>	<p>such a substance. The standard of such proof is delineated in sub-section (2) of Section 35 of the Act, as “beyond a reasonable doubt”. If the Court entertains strong doubt regarding the accused awareness about the nature of the substance in the gunny bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strong doubt dispelled. Even so, it is for the accused to dispel any doubt in that regard. Total non compliance of section 50 can vitiate the trial. No police officer informed the appellant about his right under section 50 of the Act. In the present case, appellant was not searched by the police party in fact search was done in the vehicle of the gunny bags which will not attract requirements of section 50. Section 50 of the Act applies to the search of person and search of vehicle cannot be connected with the search of person of the appellant. No question of non-</p>
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		<p>lakh Rupees. Accused alleged non-compliance of section 42 and 50 of the Act. Aggrieved by the decision, accused made an appeal to the Supreme Court.</p>	<p>compliance of section 50 maintains.</p> <p>Section 42 is a mandatory provision which states that after receiving secret information it should be recorded in writing to the higher officer but in the present case, the police officer has not reduced the information in writing. The action of the officer, who claims to have exercised on the strength of such unrecorded information would become suspect, though the trial may not vitiate on that score alone. But it would cause prejudice to the accused. Non-recording of the vital information collected by the police at the first instance can be counted as a circumstance in favour of the appellant. The real culprits would have utilized the services of an auto-rickshaw driver to transport the gunny bags and it is not necessary that the auto-rickshaw driver should have been told in advance that the gunny bags contained such</p>
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			<p>offensive substance. No evidences were adduced by the prosecution which shows any such connivance between the appellant and real culprit, or that known to each other. And police received the information about Syed Husen and other person who were absconding from reach of the police and these two were the real culprit. Therefore, an accused had discharged the burden of proof as per the section 35 of the Act. Appeal is allowed and impugned decision of High Court was set aside. Appellant was acquitted from conviction by restoring the order of trial court.</p>
08.	<p>T. Thomson v. State of Kerala</p> <p>[(2002) 9 SCC 618]</p> <p>Decided on: 20.08.2000</p> <p>Judges: K.T.</p>	<p>The Police Officer with his team conducted raid at house where contraband articles were found in possession. T. Thomas was convicted under section 21 and 25 of the Act and sentenced rigorous imprisonment for 20 years along with a fine of rupees 2 lakhs. Appellant contended there was no written authorization to conduct a search</p>	<p>Supreme Court reduces rigorous imprisonment to 10 years and fine up to 1 Lakh rupees.</p> <p>Supreme Courts decides not to disturb the finding of the court and stated as per section 41(2) an officer subordinate to gazetted officer requires authorization to conduct search if gazetted officer wants him to</p>

	Thomas and R.P. Sethi	in the house as per the section 41(2) of the Act, therefore the search is held without authorization and appealed to the High Court. High Court upheld the decision of Trial Court. Therefore, an appeal by special leave was preferred by appellant and pleads to reduce the punishment for minimum period as prescribed for the offence.	conduct such search but when such search is itself conducted by gazetted officer there is no need for any authorization from any another gazetted officer.
09.	Sajan Abraham v. State of Kerala [AIR 2001 SC 3190] Decided on: 07.08.2001 Judges: A.P. Mishra and Shivraj V. Patil	The head constable with other two constables received the information about an accused selling the injecting narcotic drugs. They informed this to sub-inspector who was coming in a jeep along with his police party. On reaching the spot, they identified the accused which was found in the possession of 'Tidigestic' narcotic drugs. The packet was seized and its sample was sent for chemical analysis. The charge sheet was submitted. The witnesses were the police constables and one more person who was not examined and therefore, the trial court acquitted the accused as discrepancies were found in the evidence of the	Supreme Court upholds the decision of High Court and does not find any infirmity in its decision. The constable received the information at 7 pm and transmitted the information to sub inspector when they were on patrolling. They all reached the spot at 7:30 pm and conduct search. As per section 42, the information should be reduced in writing to higher officer before search, seizure or arrest. In the given case, if they have not acted immediately, appellant may have escaped. Therefore, when the following of mandate strictly, results in delay in trapping an accused,

		<p>prosecution. The High Court set aside the decision of trial court and convicted the accused under section 21 of the Act for 10 years rigorous imprisonment and a fine of 1 Lakh Rupees. The accused was in possession of drug which comes under section 21 of the Act. The discrepancies which were found by trial court were trivial which do not affect the veracity or the credibility of the prosecution story. Appeal was made to the Supreme Court as mandatory provisions namely section 42, 50 and 57 were not complied, hence conviction and sentence should be set aside.</p>	<p>which may lead the accused to escape, then prosecution case should not be thrown out. No violation of section 42 of the Act. Next issue was compliance of mandatory provision section 50. No offer for conducting search in front of magistrate or gazetted officer. But accused was informed orally about his right of search as per section 50, which he opted out. The oral communication is valid under section 50 of the Act.</p> <p>Next issue is compliance of section 57 of the Act, which states that full report of all particulars regarding search, seizure and arrest shall be submitted to the immediate higher officer within 48 hours. Here in the given case, no report has been sent to the higher officer but high court has mentioned that inspector has sent the copies of FIR, other documents and records of arrest of appellant, seizure of contraband material were sent to the his immediate higher</p>
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			<p>officer. All necessary information required was sent in a report. There was substantial compliance of section 57, mere absence of any such report will not cause prejudice to the accused. Relevant information was sent to the immediate higher officer causing no fatal to the accused. No infirmity in decision of High Court. Petition dismissed.</p>
10.	<p>Narayanaswamy Ravishankar v. Asstt. Director, Directorate of Revenue Intelligence</p> <p>[AIR 2002 SC 3658]</p> <p>Decided On: 03.10.2002</p> <p>Judges: B.N. Kirpal, Dr. Arijit Pasayat and S.B. Sinha.</p>	<p>The accused was carrying heroin with him, which he was attempting to transport from the International Airport, Madras to Singapore. On search, heroin was concealed in the bottom of a suitcase. The investigating officer had not recorded the information as per Section 42 of the Act and non-compliance of other mandatory section of the NDPS Act. The Trial court acquitted the accused as there was non-compliance of Section 42 and 50 of the NDPS Act. An appeal was made by the State, in which decision was reversed by the High Court and an accused was convicted and sentenced for</p>	<p>The Supreme Court upheld the decision of High Court. Section 42 empowers the officer to conduct search, seizure and arrest in building, conveyance and enclosed place. According to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provision of Section 43 of the NDPS Act which would be applicable. Question of non-compliance of section 42 of the Act is totally irrelevant. As far as section 50 is concerned, Section 50 applies</p>

		<p>10 years rigorous imprisonment and a fine of 1 lakh rupees. Aggrieved by the decision appeal was preferred to the Supreme Court as there was non-compliance of mandatory provision of the NDPS Act.</p>	<p>to the search of person and in the instant case search and seizure was not conducted on the person. The provision of Section 50 of the NDPS Act was not attracted.</p> <p>The High Court was right in coming to the conclusion. Decision of High Court was upheld by Supreme Court. Appeal was dismissed.</p>
11.	<p>Narcotics Control Bureau v. Kulwant Singh</p> <p>[AIR 2003 SC 1599]</p> <p>Decided on: 11.02.2003</p> <p>Judges: N. Santosh Hegde and B.P. Singh</p>	<p>Kulwant Singh was raided by an officer of Narcotic Control Bureau (NCB), on search found in possession of brown sugar and therefore convicted under section 21 of the Act by the Additional Session Judge. High Court set aside the order and acquitted him stating that the complaint filed by an officer of NCB was without authority as per section 41 and therefore all proceedings are illegal as they are not empowered to search, seizure or arrest. NCB is not department of the Government. State appealed through special leave.</p>	<p>Supreme Court set aside the decision of High court.</p> <p>NCB is not a separate legal entity and not a department of the Government. NCB is constituted by the Central Government by exercising its power prescribed in the Act. It is not constituted by the Act but under the Act. NCB is under the supervision of department of Revenue only to act as a wing or branch. Therefore the power exercised by them under section 41 and 42 of the Act are valid and legal. The search and seizure conducted by them under section 41 of the Act are</p>

			warranted and authorized.
12.	<p>M. Prabhulal v. The Assistant Director, Directorate of Revenue Intelligence</p> <p>[AIR 2003 SC 4311]</p> <p>Decided on: 19.09.2003</p> <p>Judges: Y.K. Sabarwal</p>	<p>The accused were found guilty under section 8(c), 29 read with section 21 of the NDPS Act and convicted for 10 years rigorous imprisonment and fine of Rs. 1 lakh by the trial court. Appealed before high court to vitiate the trial as there was non-compliance of section 42 of the Act. High Court upheld the decision of trial court and therefore this appeal is preferred by special leave.</p>	<p>Supreme Court upheld the decision of High court and sustains the conviction of appellant.</p> <p>Section 41(3) of the Act vests power to the officers acting under section 42 and categorizes them into as (i) the officer to whom warrant is issued under section 41(1) (ii) the officer who authorized the arrest under section 41(2) and (ii) the officer who is so authorizes under section 41(2).</p> <p>Therefore, an empowered Gazetted Officer has also all the powers of Section 42 including power of seizure. Section 42 provides for procedure and power of entry, search, seizure and arrest without warrant or authorization. it is clear from Section 41(2) that the Central Government or State Government, as the case may be, can only empower an officer of a gazetted rank who can either himself act or</p>

			<p>authorise his subordinate on the terms stated in the Section. Under Sub-section (1) of Section 42, however, there is no restriction on the Central Government or the State Government to empower only a Gazetted Officer. But on an officer empowered under Sub-section (1) of Section 42, there are additional checks and balances as provided in the proviso and also provided in Sub-section (2) of Section 42. 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. The Supreme Court stated that the High Court was right in concluding that Section 42(2) is not applicable when search, seizure is conducted by a gazetted officer under Section 41(2) and (3). The conviction</p>
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			of appellant was sustained and appeal was dismissed.
13.	Prabha Shankar Dubey V. State of M.P. Decided On: 02.12.2003 Judges: Arijit Pasayat .	The investigation officer received the information against an accused was in possession of opium were going on a scooter. Information was recorded for superior officer. Accused were stooped and apprised through the notice to be searched before magistrate or gazetted officer. They decided to be searched before the police. On search, opium was found on the “person” of each of them. Samples were taken and sealed. The remaining contraband was also sealed and seized and deposited to the police station. The information relating to search and arrest of the accused person was sent to the Forensic Science Laboratory. The Report declared the seized contraband was opium. Relying on the evidences adduced, the trial court convicted accused under section 18 and sentenced to undergo 10 years rigorous imprisonment and a fine of 1 lakh rupees. Appeal made to the High court alleging the	The supreme upheld the decision of trial court and high court. Section 50 of the Act is discussed by constitutional bench and has divergent views. It is not disputed that there is no specific form prescribed or intended for conveying the information required to be given under Section 50. What is necessary is that the accused should be made aware of the existence of his right to be searched in presence of one of the officers named in the Section itself. Since no specific mode or manner is prescribed or intended, the Court has to see the substance and not the form of intimation. Section 50 does not involve any self-incrimination. It is only a procedure required to protect the rights of an accused being made aware of the existence of his right to be searched if so required by him before any of

		conviction as there was non-compliance of mandatory provisions 42 and 50 of the NDPS Act. High court decided not to interfere in the findings of the trial court as there was full compliance of the mandatory provisions. Aggrieved by the decision an appeal was preferred to Supreme Court.	the specified officers. The object seems to be to ensure that at a later stage the accused does not take a plea that the articles were planted on him or that those were not recovered from him. To put it differently, fair play and transparency in the process of search has been given the primacy. The substantial compliance has been made by the police officer in the instant case. There is no infirmity in the impugned judgment to warrant interference.
14.	Rajendra v. State of Madhya Pradesh [(2004)1 SCC 432] Decided on: 17.12.2003 Judges: Doraiswamy Raju and Arijit Pasayat.	Inspector received an information that two persons had got down from Madhya Pradesh Express were waiting at platform were in possession of contraband articles. The police officer recorded the information and reached the spot, found the accused standing there with the suitcase and bags. On search, an accused were found in possession of 23 kg “Ganja” and 17 kg “Ganja” respectively. The Contraband was sealed and seized after taking the sealed	The Supreme Court upheld the decision of Trial court and High Court. Section 42 was discussed earlier in various cases. Section 42 enables certain officers duly empowered in this behalf by the Central or State Government, as the case may be, to enter into and search any building, conveyance or enclosed place for the purpose mentioned therein without any warrant or authorization. Section 42 deals with

		<p>sample for forensic laboratory. Later full report was search, seizure and arrest was sent to the Senior Railway Police. Placing reliance on the evidence adduced, the trial court recorded conviction under section 20(b) (i) of the NDPS Act and sentencing of 3 years and fine of Rs. 2000. The High Court upheld the decision of Trial Court. Aggrieved by the decision appeal was preferred alleging the non compliance of section 42 and 50 of the Act by the police officer conducting search.</p>	<p>"building, conveyance or enclosed place" whereas Section 43 deals with power of seizure and arrest in public place. Section 42 comprises of two components. One relates to the basis of information i.e. (i) from personal knowledge (ii) information given by person and taken down in writing. The second is that the information must relate to commission of offence punishable under chapter IV and/or keeping or concealment of document or article in any building, conveyance or enclosed place which may furnish evidence of commission of such offence. Unless both the components exist Section 42 has no application. The trial Court and the High Court after analyzing the evidence have come to hold that there was compliance of Section 42(2) in the sense that requisite documents were sent to the superior officer, though per se Section 42 had no application to the facts of the case.</p>
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			Section 50 applies to search of person and in present case search of bags was conducted. No question of non-compliance arises. High court was right in holding this conclusion. Appeal dismissed.
15.	<p>Durgo Bai and Anr v. State of Punjab</p> <p>[AIR 2004 SC 4170]</p> <p>Decided on: 10.08.2004</p> <p>Judges: P. Venkataram Reddy and B.P. Singh.</p>	<p>The inspector received the telephonic from the BSF commandant that a special patrolling has to be organized as he had some information about smuggling. The inspector along with other police personnel went to the BSF Headquarter, and then the commandant deputed two inspectors and three BSF personnel for patrolling. They noticed two persons forwarding towards them and when signaled to stop, they started firing on the patrolling party. On searching, an accused was found in possession of “brown sugar”, samples was taken and send to the laboratory for test and remaining contraband was sealed and seized. Relying on the evidences adduced the trial court convicted the person under section 22 of the NDPS Act for 10 years rigorous</p>	<p>The Supreme Court upheld the decision of trial court and High Court.</p> <p>The inspector received the information through BSF commandant. As per section 42, the information needs to be reduced in writing but no information has been reduced in writing in the present case. Section 42 deals with specific information which needs to be reduced in writing but the information the inspector received was general information about some smuggling activity and no name of accused was there. Moreover, section 42 empowers the search, seizure and arrest in building, conveyance and enclosed place. Section 42 does not attract the facts and section 43</p>

		<p>imprisonment and a fine of rupees 1 lakh was imposed. An appeal is made to the High court for vitiating the trial as there was non- compliance of mandatory provisions of the Act and accused was convicted under section 21 and brown sugar being an opium derivative containing ‘diacetyi morphine’ comes under section 22 of the Act. High Court held that the prosecution case was fully established and evidences adduced were reliable and there was no legal flaw which vitiated the trial. Aggrieved by the decision an appeal was preferred to the Supreme Court on the same issues.</p>	<p>will be applicable. Therefore, no violation of Section 42 of the Act.</p> <p>As to issues raised regarding the compliance of section 50, the court discussed the previous decision of Supreme Court. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted. Mere citation of wrong section in the charge would not cause any prejudice to an accused as punishment prescribe under section 21 and 22 are same.</p>
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			The trial and conviction cannot be set aside on this score. His conviction under Section 22 of the NDPS Act is altered to one under Section 21 of the Act and the sentence shall remain the same. Appeal dismissed.
16.	<p>G. Srinivas Gaud V. State of A.P.</p> <p>[AIR 2005 SC 3647]</p> <p>Decided On: 3.10.2005</p> <p>Judges: Arun Kumar and A.K. Mathur</p>	The Assistant Commissioner of Prohibition and Excise, received information about illegal possession of Diazepam in premises of an accused. Diazepam is banned drug under the NDPS Act. The Assistant commissioner along with two constables and two independent witnesses went to the spot to conduct search. On searching house, a plastic bag containing some chemical was found. On opening it was revealed as white powder like substance. Two persons present in the house conceded that substance is Diazepam. It was purchased by Srinivasan Gaud by Uma Mahaswar, he was not having permit or license for possessing the substance. The sample was send to forensic laboratory for test. The Report confirmed the	<p>The Supreme Court upheld the decision of trial court and High Court.</p> <p>The main issue raised by the appellant was non-compliance of section 42 of the Act. The Assistant Commissioner as per section 42(1) did not reduce the information in writing before proceeding for search and seizure and neither send the copy to the immediate senior officer under section 42(2). The officer has the reliable information regarding storage and possession of Diazepam and there was no time to obtain a search warrant from the court and delay could cause material to disappear. This is sufficient compliance of the provision regarding making note in writing about the information received by an officer.</p>

		<p>substance containing Diazepam and urea. The trial court convicted the accused under section 22 of the NDPS Act sentencing 10 years imprisonment and fine of 1 Lakh Rupees. Appealed was made to the High Court alleging the conviction as there was non-compliance of section 42 of the Act. Information was not reduced in writing before proceeding for search and seizure and neither copy was send to the immediate superior officer. The High Court upheld the decision of trial court. Aggrieved by the decision, appeal was preferred to the Supreme Court.</p>	<p>Now dealing with the sending of copy to the immediate senior officer. Section 42 is about arrest, search and seizure being carried out. Section 42(1), as its heading suggests, applies to cases of officers carrying out search and seizure without warrant or authorisation under Section 41(1) or 41(2) of the Act. It is a general power of search, seizure and arrest. Section 42 does not use the words "officers of gazetted rank'. It covers all empowered officers of the central excise, narcotics, customs, revenue intelligence or any other department of Central Government including officers of para military and armed forces and officers of State Governments. Sub-section (2) contains the requirement of sending copy of information on which they take action which they are required to note in writing at the time they receive it. The information is to be sent to their immediate official superiors. The requirement of</p>
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			<p>informing the immediate official superior under Section 42(2), in our view, has to be confined to cases where the action is without authorisation by officers below the rank of gazetted officers without authorization. The requirement under Section 42(2) need not to be extended to cases of arrest, search and seizure by officers of gazette rank. It will be anomalous to say that officers of gazetted rank who are conferred with power to authorise junior officers to carry out arrest search and seizure, are required to report to their superior officers when they carry out arrest, search or seizure on their own. The gazetted rank officers enjoy special position and privileges under the Act. They need not be equated to officers taking action without authorisation or warrants. Both appeals dismissed by the Supreme Court.</p>
17.	Babubhai Odhavji Patel	The PSI along with other police constable was on patrol duty at	The Supreme Court upheld the decision of trial court and high

	<p style="text-align: center;">v.</p> <p style="text-align: center;">State of Gujarat</p> <p style="text-align: center;">[AIR 2006 SC 102]</p> <p style="text-align: center;">Decided On: 27.10.2005</p> <p style="text-align: center;">Judges: K.G. Balakrishnan and B.N. Srikrishna.</p>	<p>night. At about 5:30 a.m., they noticed a tanker lorry was crossing the Palanpur railway crossing line. They stopped the lorry and started search of the lorry. The police team called the two panchas to conduct further search. The jute bags containing dark brown substance which smelled like opium. The sample was taken from each bag and send to the laboratory for test and remaining bags were sealed and seized by police. On the basis of the evidences the trial court convicted the accused under section 17 of the Act sentencing 10 years rigorous imprisonment and 1 lakh rupees of fine. The accused aggrieved by the decision made an appeal to high court to set aside their trial as there was non- compliance of section 42 of the Act and procedural irregularities. The High Court relied on the findings of trial court and upheld the decision of trial court. A present appeal was preferred to the Supreme court to set aside their conviction as there was non-</p>	<p>court.</p> <p>In the present case, the PSI was instructed by D.I.G. that some intoxicant materials were being transported illegally from the state of Rajasthan and Uttar Pradesh. This was only general information given by the D.I.G. which need not to be recorded as a source of information as contemplated under section 42 of the NDPS Act. As per the section 42 of the Act, only specific information need to be recorded by the officer who is empowered to conduct a search. In present case, the team was on usual patrol duty and they incidentally came across the tanker lorry and on search the contraband substances were recovered. No violation of section 42 of the Act. It was a chance recovery, procedure contemplated under section 42 cannot be complied with. All other provision like 52, 55 and 57 are not mandatory in nature only directive.</p> <p>The Supreme court held that</p>
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		compliance of mandatory provision of the Act.	the appellant has been rightly found guilty by session court and his conviction was rightly upheld by the High Court. Appeal dismissed. The accused that was on bail was ordered to surrender to the police within one week.
18.	<p>Ravindra @ John</p> <p>v.</p> <p>The Superintendent of Customs</p> <p>[AIR 2007 SC 2040]</p> <p>Decided on: 14.05.2007</p> <p>Judges: B.P. Singh and Tarun Chaterjee.</p>	<p>The criminal appeal of Ravindran and John were clubbed and decided through the same judgement. On receiving information about the possession of narcotics drugs, police officers rushed to the bus stand and found Ravindran. They offered him to conduct search in front of gazette officer or magistrate which he instantly denies and then in presence of two witnesses his search was conducted. The polythene bag was found in his possession which was sealed and seized. He made a confession and later retracts from his confession. The Co- accused was released by the court as no evidence against were found and he was given benefit of doubt. The trial court convicted Ravindran and other co-accused John under section 22</p>	<p>Supreme Court set aside the decision of High Court and Trial Court.</p> <p>Supreme Court observes the reasoning of High Court and Trial court and states they were right in concluding that section 42 of the Act was not attract to the facts of his case. Section 42 applies to a case where the officers concerned on information received, or having reason to believe from personal knowledge that any offence has been committed in relation to any drug or psychotropic substance etc. and which is kept or concealed in any building, conveyance or enclosed place may, between sunrise and sunset, enter into and search any building,</p>

		<p>and 29 of the Act for 10 years rigorous imprisonment and a fine of 1 lakh rupees. Appeal was made to the High Court as the police officers did not record the reason of his belief as per section 42 of the Act also search was not conducted as per section 50 of the Act. Aggrieved by the decision of the High Court appeal was preferred special leave.</p>	<p>conveyance or place. The facts of this case disclose that the arrest and seizure took place at the bus stand and not in any building, conveyance or enclosed place. The facts of this case disclose that the arrest and seizure took place at the bus stand and not in any building, conveyance or enclosed place. Section 43 will apply to this case and there is no requirement that the concerned officer must send a copy to his immediate higher officer within 72 hours. No question of non-compliance of the section 42 of the Act. Section 50 of the Act will also not attract to the facts of the case, Section 50 applies for the search of person and not articles. It stated that a bag, briefcase or any such article under no circumstances, be treated as body of a human being. They cannot even remotely be treated to be part of the body of a human being. It is not possible to include these articles within the ambit</p>
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			of the word “person” occurring in section 50 of the Act. The two witnesses were not examined and which is fatal to the prosecution. Moreover no reliable evidences were found against them, only confession was there which was not voluntary and retracted later. Benefit of doubt was being given to other co- accused Hiralal and therefore it should be extended to Ravindran and John also as there were no reliable evidence found against the accused. Appeal was allowed and his conviction was set aside.
19.	<p>State, NCT of Delhi</p> <p>v.</p> <p>Malvinder Singh</p> <p>[AIR 2007 SC (Supp) 237.</p> <p>Decided on: 21.07.2007</p> <p>Judges: Dr. Arijit Pasayat and P.P.</p>	<p>In the present case the sub inspector received the information during patrolling duty against Malvinder Singh that he is in possession of opium. The raiding team was organized and they reached at suspected place. After waiting there for long, they observe Mr. Malvinder Singh driving scooter and Om Prakash was sitting on its pillion seat. They stopped them and offer a notice to be searched</p>	<p>The Supreme Court set aside the decision of High court and decision of trial court was restored.</p> <p>The Supreme Court made the observation that High Court was erroneous in deciding the case. The fact of the case does not attract Section 42 of the act. Section 42 empowers the officer that after recording secret information to the</p>

	Naolekar	<p>before magistrate or gazetted officer which they denied. The ACP and SHO were called at the spot and search was conducted before them. Accused were found in possession of opium, concealing in newspaper packet between their shirt and chest and also in scooter's dikki. The packets were sealed and seized after taking sample for laboratory test. The accused were charged under 17 of the NDPS Act. The trial court found the evidence to be cogent and credible and convicted them. Appeal was made before the High Court and pleaded that conviction should be set aside as there was non-compliance of section 42 of the Act. High court accepted the plea that the secret information was not reduced in writing and was not send to the superior officer, it is mandatory provision and non compliance would cause prejudice to an accused, the conviction was set aside and acquittal was directed. The appeal was preferred through special leave.</p>	<p>superior officer, they can made search, seizure and arrest to any building, conveyance and or enclosed place. Section 43 empowers officers to conduct search and seizure in public place and transit. The recording of information was requirement under section 42 but it is not required under section 43 of the Act. Section 42 and section 43 contemplates two main different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed building, while section 43 contemplates a seizure in any public place or in transit. In the present case the scooter was searched at public place. Therefore, no need to record information as per section 42 of the Act.</p> <p>Also in the present case raid was conducted by the gazetted officer, acting under section 41 of the NDPS. Therefore, it was not necessary to comply with requirement of section 42 of the Act. Section 42 of the Act</p>
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			has no application to the facts of this case. High Court decision is unsustainable.
20.	<p>Man Bahadur v. State of H.P.</p> <p>[AIR 2009 SC 369]</p> <p>Decided On: 23.09.2008</p> <p>Judges: S.B. Sinha and Cyriac Joseph</p>	<p>Appeal was made to the honorable Supreme Court questioning whether the investigating officer (Shri Lal Chand in this case) was bound to make the accused- appellant aware that he had also a right to be searched before Magistrate or a gazetted officer.</p>	<p>The Supreme Court set aside the decision of trail court and High Court.</p> <p>The Supreme Court cited various judgments on Section 50. The Court observed that no search memo or any other document do not show that the appellant was made aware of his right to be searched before gazetted officer or Magistrate.</p> <p>The provisions contained in the NDPS Act are penal in nature. All requirements laid down therein must be complied strictly. Justness and Fairness of a trial is also implicit in Article 21 Of the constitution. A fair trial is a human right. Every action of the authorities under the Act must be construed having regard to the provisions of the Act. Article 12 of the Universal Declaration of Human Rights provides for the Right to a fair trial. Such rights are enshrined in our Constitutional Scheme being</p>

			<p>Article 21 of the Constitution of India. If an accused has a right of fair trial, his case must be examined keeping in view the ordinary law of the land.</p> <p>There is no substantial compliance of section 50. No impugned judgment of conviction can be upheld. The appeal is allowed.</p>
21.	<p>Hamidhbai Azambhai Malik v. State of Gujrat</p> <p>[AIR 2009 Sc 1378]</p> <p>Decided on: 12.01.2009</p> <p>Judges: Arijit Pasayat and Mukundakan Sharma</p>	<p>The officer on getting information about accused engaged in practice of selling contraband article in his residence, he and other officers started raid in the presence of panchas. 17 polythene bags of same measurement were found containing ‘charas’. The goods were sealed and seized. The Additional Session Judge convicted the accused under section 20(b)(ii) of the Act with 10 years rigorous imprisonment along with a fine of Rs. 1 lakh. The accused appealed to the high court on the grounds that the officer was not authorized and empowered to do search and there was total non-compliance of the section 42(2) of the Act.</p>	<p>Supreme court upheld the decision of the trial court and high court.</p> <p>In this case, search was done by an investigating officer when he was on regular patrolling and in fact he wrote down the reason of his belief and transmitted it to higher officers through messenger. Abundant precautions were taken by the investigating officer. The Supreme Court states, when information or intimation or knowledge come to the notice of the Investigation officer in course of the regular patrolling or an investigation of some other offence it is not necessary to</p>

		High Court upheld the decision of trial court. Aggrieved by the decision, appeal was made to the Supreme court through special leave,	follow in all cases the conditions incorporated in section 42 of the Act. Issue regarding the empowered officer was not raised in high court and trial and therefore will not be dealt here. Appeal dismissed.
22.	<p>State of Rajasthan</p> <p>v.</p> <p>Shanti</p> <p>[AIR 2010 SC 43]</p> <p>Decided On: 21.04.2009</p> <p>Judges: Arijit Pasayat and A.K. Ganguly.</p>	The Police Officer received the information that an accused Shanti and her son along with her husband were habitually indulge in the sale and purchase of opium. Accused was carrying a bag and she was stopped. On search, 10 kg opium was recovered from accused. The charges framed against accused under section 8/18 of the Act. The trial court acquitted the accused as there was non-compliance of section 42(2) and 50 of the NDPS Act. Appeal made to the High Court, which was dismissed. Appeal is preferred through special leave.	The Supreme Court upheld the decision of trial court and High court. The Supreme Court stated, so far as the conclusions regarding Section 50 recorded by the trial Court and the High court are concerned, they same are not in line with what this Court has said. Section 50 has application only when there was personal search. In the instant case the samples were collected, after seizure, from her bag. The search of bags was conducted. Nevertheless, there has been non-compliance with the requirement of Section 42(2) as recorded both by the trial Court and the High Court. That being so there is no merit in this appeal. Appeal was dismissed.

<p>23.</p>	<p>Karnail Singh v. State of Haryana [2009 CriLJ 4299] Decided on: 29.07.2009 Judges: K.G. Balakrishnan, R.V. Raveedran, D.K. Jain, P. Sathasivam and J.M. Panchal.</p>	<p>Appeals were placed before the Constitution Bench to resolve the issue for scope and applicability of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in the matter of conducting search, seizure and arrest without warrant or authorization.</p> <p>In the case of Abdul Rashid Ibrahim Mansuri v. State of Gujrat, a three judge Bench of this Court held that compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is mandatory and failure to take down the information in writing and forthwith send a report to is immediate official superior would cause prejudice to the accused. And in the case of Sajan Abraham v. State of Kerala, which was also decided by a three-Judge Bench, it was held that Section 42 was not mandatory and substantial compliance was sufficient. In view of the conflicting opinions regarding the scope and applicability of Section 42 of the</p>	<p>A careful examination of the facts in Abdul Rashid and Sajan Abraham shows that the decisions revolved on the facts and do not really lay down different prepositions of law. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:</p> <p>(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of Section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of Clauses (a) to (d) of Section 42(1).</p> <p>(b) But if the information was received when the officer was not in the police station, but while he was on the move</p>
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		<p>Act in the matter of conducting search, seizure and arrest without warrant or authorization, these appeals were placed before the Constitution Bench to resolve the issue.</p>	<p>either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per Clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.</p> <p>(c) The compliance with the requirements of Sections 42(1) and 42 (2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy</p>
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			<p>thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.</p> <p>(d) While total non-compliance of requirements of Sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. If the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act.</p>
24.	<p>Dalel Singh v. State of Haryana [AIR 2009</p>	<p>The police officer along with his team was on patrolling received the information about the accused having possession of contraband and selling the same</p>	<p>Supreme Court upheld the decision of the trial court and high court.</p> <p>Supreme Court states that</p>

	<p>SC(Supp) 2880]</p> <p>Decided on: 7.10.2009</p> <p>Judge: V.S. Sirpurkar</p>	<p>from his house. Immediately the inspector informed higher officer through wireless and reached at spot. On search, accused was found in possession of contraband article and FIR was registered against him. The Trial court convicted the accused under section 20 of the Act for 10 years rigorous imprisonment and a fine of 1 lakh rupees. Appeal was made to the High court for non compliance of section 42 of the Act which has caused prejudice to the accused. As per the provision no information was reduced in writing. High Court upheld the decision of trial court on the substantial compliance of the section 42 of the Act. Aggrieved by the decision an appeal is referred to Supreme Court by special leave.</p>	<p>compliance with the requirement of section 42(1) and 42(2) in writing down the information received and sending a copy to the higher officer shall precede the entry, search and seizure by the officer. But in special circumstances, where writing down the information and sending a copy to higher officer get delayed by reasonable period, and that too after search, entry and seizure. It is a question of urgency and expediency depending upon the circumstances. In the present case, on receiving information police officer immediately transmitted to the higher officer through wireless. No doubt can be raised on his intention and this is a substantial compliance of section 42 of the Act. While the total non-compliance of section 42 is impermissible but substantial compliance i.e. delayed with satisfactory explanation about delay will be acceptable compliance. No</p>
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			infirmity was found in the judgment given by the lower courts. Bail bond of the accused was cancelled and ordered for his surrender. Appeal dismissed by the court.
25.	<p>Vijaysinh Chandubha Jadeja v. State of Gujarat</p> <p>[AIR 2011 SC 77]</p> <p>Decided On: 29.10.2010</p> <p>Judges: D.K. Jain, B. Sudershan Reddy, Mukundakam Sharma, R.M. Lodha and Deepak Verma.</p>	<p>In the batches of appeal, the question that is arising is whether Section 50 of the Narcotic Drug and Psychotropic Substances Act, 1985 casts a duty on the empowered officer to ‘inform’ the suspect of his right to be searched in the presence of a Gazetted Officer or a Magistrate, if he so desires or whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer can be said to be due compliance with the mandate of the said Section? This question came before three- judge bench because of other divergent decision regarding the application of Section 50 of the Act. it all depends on the oral evidence of the officer who conducts search, in case nothing is mentioned in the search</p>	<p>The Supreme Court states that, “<i>We have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision</i>”.</p> <p>The concept of 'substantial compliance' has been erroneously read into Section 50 of the NDPS Act, do not lay</p>

		<p>mahazar or any other contemporaneous document prepared at the time of search. Conflicting decisions have been rendered by this Court. We feel that the matter requires some clarification by a larger Bench. The matter is placed before the Hon'ble Chief Justice of India for taking further action in this regard. In view of the large number of cases coming up under the provisions of the NDPS Act the interpretation of Section 50 of the Act requires a little more clarification as its applicability is quite frequent in many cases.</p>	<p>down the correct proposition of law. Section 50 being the only safeguard provided to the suspect under the NDPS Act, the legislature, while enacting it, gave it the character of a "due process" clause, thereby placing some minimum procedural limitations on the exercise of such extensive statutory power, by insisting on the strict observance of the procedure established under the said Section. This safeguard is meant to ensure that the powers under the NDPS Act are not abused and a person is not falsely implicated and subjected to grave consequences which are likely to follow under the said Act. The insertion of the two sub-sections [subsection (5) and (6) of Sec-50] does not obliterate the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate. The flexibility in procedural requirements in</p>
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			<p>terms of the two newly inserted sub-sections can be resorted to only in emergent and urgent situations, contemplated in the provision, and not as a matter of course. We are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz.to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate.</p>
26.	<p>Ashok Dangra Jaiswal v. State of M.P. [AIR 2011 SC 1335]</p>	<p>The town inspector received the information that the appellant was engaged in selling of smack powder (heroin) from his cinema hall. After completing the formalities, the police party proceeded to the cinema hall. On searching, the plastic packet was</p>	<p>The Supreme Court set aside the conviction of the appellant and other two accused.</p> <p>It was observed, that during the examination of witnesses, they did not support the case of prosecution. There was</p>

	<p>Decided On: 05.04.2011</p> <p>Judges: Aftab Alam and R.M. Lodha.</p>	<p>recovered from the appellant. The suspected narcotic recovered from the Appellant was seized and samples were taken and send to the Forensic Science Laboratory. Two other employees were also searched and found in possession of heroin. Charges were framed against accused. The trial court found the accused guilty under section 8/21(b) of the NDPS Act and sentenced to undergo rigorous imprisonment of 7 years and a fine of Rupees 25,000 with the direction that in default of payment of fine, he would undergo rigorous imprisonment for a further period of one year. The High Court dismissed the appeal. Aggrieved by the decision an appeal was preferred to Supreme Court.</p>	<p>unnecessary delay in submission of samples to the laboratory. There is no explanation where the seized substance was kept in the meanwhile. The alleged narcotic powder seized from the possession of the accused, including the Appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its nonproduction. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the Appellant or the other accused. The heroin alleged to have been seized from the possession of the accused were not even produced before the trial court, so as to connect them with the samples sent to the Forensic Science Laboratory. There is no material produced in the trial, apart from the interested testimony of the police officers, to show that the heroin were seized from the</p>
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			possession of the accused or that the samples sent to the Forensic Science Laboratory were taken from the drugs seized from the possession of the accused. Supreme Court stated that the view of High Court is unsustainable. The Appellant is entitled to the benefit of doubt and acquit him of the charges and set aside the judgments and orders passed by the trial court and the High Court. Although the other two accused have not appealed for their conviction but there was no reason why benefit of this judgment may not be extended to them as well. Appeal allowed.
27.	<p>Narcotics Central Bureau</p> <p>v.</p> <p>Sukh Dev Raj Sodhi</p> <p>[AIR 2011 SC 1939]</p> <p>Decided On: 20.05.2011</p>	An appeal was made by the Narcotics Central Bureau whereby the High Court, on consideration of the facts and the legal position of the case, was pleased to hold that the mandatory provision of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, of giving the option to the accused of being searched either	<p>The Supreme court dismissed the appeal.</p> <p>The Supreme court relied on the judgement of Vijaysinh Chandubha Jadeja v. State of Gujarat and held that requirement of Section 50 of the NDPS Act is a mandatory requirement and the provision of Section 50 must be very strictly construed.</p>

	Judges: A. K. Ganguly and Deepak Verma	in the presence of the gazette officer or the Magistrate, has not been complied with. Hence, the High Court had set aside the conviction. The obligation of the authorities under Section 50 of NDPS Act. Appeal was preferred to the Supreme Court.	The requirement under Section 50 of the NDPS Act is not complied with by merely informing the accused of his option to be searched either in the presence of a gazetted officer or before a Magistrate. The requirement continues even after that and it is required that the accused person is actually brought before the gazette officer or the Magistrate and the Constitution Bench made it clear that in order to impart authenticity, transparency and creditworthiness to the entire proceedings, an Endeavour should be made by the prosecuting agency to produce the suspect before the nearest Magistrate. No infirmity in findings of the High Court. Appeal dismissed.
28.	Myla Venkateswarlu v. The State of Andhra Pradesh [AIR 2012 SC	The police officer has reliable information regarding the illegal sale of Ganja at Koneru Bazar, Tenali proceeded to the place with his patrolling team. They noticed three persons sitting under bridge and on noticing	The Supreme Court set aside the judgment and order of trial court and high court by acquitting the accused. Section 50 mentioned about the manner in which search of person is to be conducted. A

	<p>1619]</p> <p>Decided On: 04.04.2012</p> <p>Judges: Aftab Alam and Ranjana Prakash Desai.</p>	<p>them, the accused attempt to run from the spot but caught by the police party. The prosecution made the story that they themselves confessed that they were carrying Ganja packets in their pockets and denies their right under section 50 to be searched before magistrate and gazetted officer. On conducting search found in possession of Ganja. The samples were taken and sealed and remaining packets were seized and sealed. The trial court found the accused guilty under section 8(c) read with section 20(b)(i) and sentenced to six months rigorous imprisonment and fine of 2,000 rupees to be paid by each. An appeal was made to the high court questioning the correctness of the judgment and order by the Additional Session Judge. The High court dismissed the appeal. Aggrieved by the decision an appeal preferred by special grant questioning the correctness of high court decision in upholding the trial court's decision as there was non- compliance of section</p>	<p>careful perusal of Section 50 indicates that when any authorized officer is about to search any person under the provisions of Sections 41, 42 or 43 of the NDPS Act, if such person requires, he has to take such person, without unnecessary delay, to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. The Constitution Bench held that although Baldev Singh did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of Sub-section (1) of Section 50 makes it imperative for the empowered officer to inform the person concerned about the existence of his right that if he so requires, he shall be searched before a gazette officer or a Magistrate; failure to inform the suspect about the existence of his said right would cause prejudice to him, and in case he</p>
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		<p>50 of the Act as no accused were informed about their right under section 50 to be searched before magistrate or gazetted officer.</p>	<p>so opts, failure to conduct his search before a gazette officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article Suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Constitution Bench noted that in Baldev Singh, it was clarified that it was not necessary that the information required to be given Under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazette officer or a Magistrate, if so required by him. The concept of substantial compliance with the requirement of Section 50 of the NDPS Act is neither borne</p>
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			<p>out from the language of Section 50(1) there is a breach of Section 50(1) of the NDPS Act. Since the conviction of the Appellant is solely based on possession of Ganja recovered from him, it will have to be set aside. Other accused were also acquitted.</p>
<p>30.</p>	<p>Kishan Chand v. State of Haryana</p> <p>[AIR 2013 SC 357]</p> <p>Decided on: 13.12.2012</p> <p>Judges: Swatanter Kumar and Madan B. Lokur</p>	<p>On receiving the secret information about possession of contraband with the accused, the sub inspector conducts the search and finds the polythene bag containing opium. The sub inspector did not record his reason in writing neither informed his higher officer regarding it. The Trial Court convicts the accused under section 18 of the Act and sentenced him 2 years rigorous imprisonment along with fine of rupees 1 lakh on the ground that non compliance of section 42 is not mandatory and no prejudice is caused to the accused. The accused challenged the decision on the ground of non-compliance of section 42 of the Act. High Court upheld the</p>	<p>Supreme Court set aside the judgment given by high court and trial court stating them to be erroneously.</p> <p>Supreme court stated that these provisions are mandatory and total non-compliance of section 42 of the Act is incurable. These are the penal provision with harsh punishment and hence, should be construed strictly as they are for the protection of person falsely implicated. Their compliance is necessary for concluding free trial. Theory of substantial compliance cannot be a aid for it and moreover, it is a case of definite non-compliance. Further presence of gazetted officer at the time</p>

		<p>decision of trial court stating that on receiving secret information the sub inspector did not write down because of the possibility that the accused may escape. Hence, non-compliance of section 42 of the Act in the present case is not fatal to the prosecution. Aggrieved by the decision, appeal was made to the Supreme Court.</p>	<p>of search on spot is very doubtful and the prosecution failed to prove their case beyond reasonable doubt. Appeal accepted. Absolute case of prejudice to the accused and hence, accused is acquitted of the offence under section 18 of the Act.</p>
31.	<p>Sukhdev Singh v. State of Haryana</p> <p>[AIR 2013 SC 953]</p> <p>Decided on: 13.12.2012</p> <p>Judges: Swatantar Kumar</p>	<p>ASI received secret information about the accused engaged in the practice of selling “chura powder” containing contraband. On search, accused was found in possession of contraband although no information was recorded neither sent to the higher officers. The trial court convicted the accused under section 15 of the act sentencing 10 years rigorous imprisonment with 1 lakh rupees fine stating that substantial compliance of section 42 of the Act has not caused any prejudice to the accused. High Court decline to interfere with the findings of the trial court and upheld its decision. Aggrieved by the</p>	<p>Supreme Court set aside the decision of trial court and high court.</p> <p>Section 42 of the Act can be divided into two parts- first power of entry, search seizure and arrest without warrant or authorization as mentioned under sub-section (1) of section 42 and second reporting of the information in writing and sending its copy to a higher officer as per sub-section (2) of the Act. The ASI had received secret information much earlier and had sufficient time to record in writing but no efforts were taken up by him. The Word “forthwith” is</p>

		<p>decision an appeal was made to the Supreme Court for vitiating the trial as there was non-compliance of section 42 of the Act.</p>	<p>substituted by “within 72 hours” by the amendment. The unamended provision was in force at the time of commission of an offense, therefore it will be governed by that law but this provision acts as a safeguard which lays down the principal that information should be send to higher officer without delay. Moreover section 42 is a mandatory provision and there is no escape from its strict compliance. There is patent illegality in the case of prosecution and such illegality is not curable. It is absolute non-compliance of mandatory section, no question substantial compliance arises. The purpose of the section 42 of the Act is broadly stated that (i) it is mandatory provision which shall be construed strictly and compliance of furnishing information to the higher officer within very short time and preferably post-recovery. Supreme Court allowed the appeal and acquitted the</p>
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			accused of the offense under section 15 of the Act.
32.	<p>Abdul Rahim and ors. V. State</p> <p>Decided on: 11.03.2015</p> <p>Judges: M. Sathyanarayana.</p>	<p>The Assistant director of Narcotics Control Bureau (NCB) received the information that one of Farrok Mohideen was indulge in drug trafficking between India and Srilanka through Pudumadam coast of Ranad District, Tamil Nadu and has also involved Abdul Rahim, a Chennai based actor to collect the heroin from one other person based in Mumbai. The Assistant director conveyed this information to Superintendent RIU over phone. A team of officers of the NCB along with two independent witnesses went to Arapalayam Bus Stand, at Madurai for surveillance. The said person was identified by them was carrying a baggage. They were stopped and notice was issued under section 50 of the Act. The accused denies their right to be searched before magistrate or gazetted officer. The search was conducted by the officers of their carry bag containing carton it contained</p>	<p>The High Court upheld the decision of Trial Court.</p> <p>Both the accused had carried two bags separately and on search, found to be contained contraband and since the seizure has been effected from the person of the accused, Section 50 of the NDPS Act has no application.</p> <p>When the case was in trial court no issue of non-compliance of section 42 of the Act has been raised therefore, it cannot be raised in the present appeal. Also section 42 empowers the officers to conduct search and seizure into building, conveyance and enclosed place. And in the present case search was conducted in public transport Bus. Section 42 does not apply here. Section 43 empowers all the officer mention under section 42 to conduct search, seizure and arrest at public place where no writing down of secret information to</p>

		<p>plastic water bottle and when it was opened, a polythene cover containing brown colour powder was found. Samples were drawn and tested through field test kit and substances were found to be “Heroin”. The remaining contraband was sealed and seized by the officers of NCB. A mahazar was also drawn in this regard. The report of laboratory held that the quantity of contraband is more than the commercial quantity. After analyzing all the oral and documentary evidences, the Trial Court convicted the accused under section 21, 28 and 29 of the NDPS Act. And also default sentence of one year rigorous imprisonment to each accused. Aggrieved by the decision an appeal was made before the High court alleging non compliance of section 42 of the Act.</p>	<p>superior officer is required. Moreover, the officers of NCB were acting under section 41 of the Act. In the light of the provision of Section 41(2) of NDPS Act, the compliance under Section 42(2) of the Act is not necessary. The Chemical Analysis report disclose that as per the quantification test, the quantity percentage of Narcotic Drugs Psychotropic Substance found in the contraband exceeds the commercial quantity.</p> <p>The court stated that the trial court has properly analyzed the oral and documentary evidences and reached that the respondent has proved guilt on the part of the accused beyond reasonable doubt. There is no error apparent or infirmity in the reasons assigned by the trial Court for convicting both the accused. The criminal appeal is dismissed, confirming the judgement passed by the learned Additional District Judge.</p> <p>The default sentence is reduced</p>
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			from rigorous imprisonment for one year each, to rigorous imprisonment for two months, each, and in other aspects, the judgment of the trial Court, is confirmed.
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**WORKSHOP ON LEGAL FRAMEWORK TO DEAL WITH
DRUG ADDICTION AND DRUG TRAFFICKING**

Report of Mock Trial

24th August 2015, Day 1

Session- 3, 12 pm to 1 pm

I. Facts of the Case

The investigating officer, Mr. Y along with his team members L1 and L2 was on patrolling duty at Suraj Nagar, Village. They received secret information, that Mr. X was engaged in selling of Chura post (poppy husk) in his residence and if raid is conducted upon his house, he can be caught red-handed in possession of contraband goods.

The investigation officer along with his team reached Mr. X's house to raid and found five bags concealed under a heap of chaff in the courtyard of the house. On suspicion of possessing some contraband, they offered Mr. X to be searched before magistrate or gazetted officer as per their right under section 50 of the Act. Mr. X desired to be searched before gazetted officer.

Mr. J, the Deputy Superintendent of Police was called through constable to reach the spot, and he reached there after half an hour. On his instruction the search of gunny bags was conducted, and from each gunny bag, sample was taken for laboratory test. The gunny bags were sealed and seized by the police officials in the police station with seal intact.

The challan was filed against Mr. X on receiving the reports of Forensic Science Laboratory.

II. Points of Determination

- (I) At what stage and by what time the authorized officer should comply with the requirements of section 42 of the NDPS Act and report the matter to his superior officer?
- (II) Whether trial should be vitiated?

III. Relevant Provision

Section 42 of the Narcotic Drug and Psychotropic Substances Act, 1985.

Section 42: Power of entry, search, seizure and arrest without warrant or authorization.-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

IV. Argument on behalf of State

- I. There was substantial compliance inasmuch as after effecting the recovery he had sent a ruqa Ext. PF to his senior officer, on the basis of which the FIR was registered and thus, there was substantial compliance of the provisions of Section 42 of NDPS Act.
- II. In the present case, secret information was received by Mr. Y and his team members L1 and L2 when they were on patrolling duty at Suraj Nagar, Village. It means that Mr. Y was in motion, at the time, when he received the secret information, against the accused. Since, the secret informer had informed Mr. Y that if a raid was conducted immediately, then a big haul of contraband, could be recovered from the house of the accused, where he was present. It was his bounden duty, to immediately rush to the disclosed place, to detect the accused with contraband. It was, in his view of the matter, that he had no time to record the information, and send the same to the superior officer, as had he done so, there would have been every possibility of the accused absconding, and the purpose of section 42 of the Act, by recording the ruqa, embodying the secret information therein, as also by sending the message to the DSP, to come to the spot, as a result whereof, he came to the spot.

Since, there was substantial compliance, with the provision of Section 42 of the Act, it could not be said that there was intentional and deliberate non-compliance thereof strictly.

In *Sajan Abraham v. State of Kerala*¹, the principle is laid down that “if in a case, the following of mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then prosecution case should not be thrown out. Had they not done so immediately, the opportunity of seizure and arrest of the accused would have been lost. How could have recorded the secret information or communicated to his superior while he was on motion, on patrol duty. No violation of section 42 of the Act.

All necessary information that is ruqa was send by him to superior officer and FIR was registered against the accused. So all necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be

¹ *Sajan Abraham v. State of Kerala*[(2001) 6 SCC 692].

said it has prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, it would not vitiate the trial.

In special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency. If any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non- sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42.

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