

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Criminal Appeal No: 406 of 2015

Reserved on: 07.03.2026

Announced on : 06.04.2026

State of Himachal Pradesh

....Appellant

versus

Tara Chand

....Respondent

Coram:

Honble Mr. Justice Vivek Singh Thakur, Judge

Honble Mr. Justice Ranjan Sharma, Judge

¹Whether approved for reporting? Yes

For the appellant: Mr. P.K. Nadda, Additional Advocate General.

For the respondent: Mr. Chaman Negi and Ms. Kanta Thakur, Advocates.

Ranjan Sharma, Judge

State of Himachal Pradesh, being appellant, has come up in the instant appeal under Section 378 of the Code of Criminal Procedure, assailing the judgment dated 16.03.2015, passed by Learned Special Judge (1), Mandi [HP], in Sessions Trial No 48 of 2010, titled as State of Himachal Pradesh versus Tara Chand, acquitting the Respondent-accused herein, for the offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 ***[referred to as***

¹ Whether reporters of Local Papers may be allowed to see the judgment?

‘NDPS Act’ herein], alleging recovery of 450 grams of *Cannabis-Charas* from his conscious and exclusive possession on 29.03.2010 at about 08:10 a.m. at Kupardhar.

PROSECUTION STORY:

2. Factual matrix, of the prosecution story is, that a police patrolling party headed by PW-9 ASI Orender Singh; PW-1 Constable Ashwani Kumar ; PW-2 HHG Brahma Nand and HHG Baldev had gone in Government vehicle towards Ghatasni, near Kupardhar, at about 08:10 a.m. During patrolling a vehicle, tempo trax, bearing registration No. HP-01 M-3704, came on the spot, which was full of passengers. The vehicle was stopped by the police for the purposes of checking. On seeing the police party, Respondent-accused who was sitting on the backside of vehicle became perplexed. On suspicion, Respondent-accused was directed to alight from the vehicle and his pant was found bulging out, and the accused was suspected having some contraband inside his pant. The police party associated PW-3 Ajay Guleria and Bhim Chand (owner of temp trax-vehicle) as

witness to the incident. The consent of the Respondent -accused for his *personal search was obtained vide Consent memo Ex PW-1/A*. The members of the police party afforded their search to the accused vide memo Ex. PW-1/B and nothing was recovered from the police party. Thereafter, police conducted the personal search of the respondent-accused by making him to remove his pant-jeans, when, a packet wrapped with cello tape was recovered from the areas near the private parts of body of accused and the same was found to be containing black substance in the shape of sticks and after smelling and testing the same came out to be Charas and *thereafter* police prepared Identification Memo of contraband vide *Ex PW-1/C* and on weighing, the contraband was found to be 450 grams. The recovered contraband alongwith cello tape and polythene wrapper was kept in parcel which was sealed with five seals of impression "H". The recovered contraband was taken into possession vide memo *Ex PW-1/E*. The photographs clicked vide *Ex. PW-2/A* and *Ex PW-2/B* and NCB form *Ex PW-8/D*

was filled in on the spot and facsimile of seal was obtained on NCB form and separately also.

2(i). The Investigating Officer prepared *Rukka Ex. PW-9/A* and the same was sent through PW-1-Constable Ashwani Kumar to PW-8 SHO-SI Sohan Singh, who recorded FIR *ExPW-8/A* on 29.03.2010. The Investigating Officer, PW 9 Orender Singh, prepared Spot Map, Ex PW 9/B and recorded the statements of witnesses. The respondent-accused was arrested vide memo *ExPW-9/D* on 29.03.2010 at 01:30 p.m. After completing the codal formalities, the case property was handed over to PW-8 SI Sohan Singh, who re-sealed the same with three seals of impression "S" and drew the sample separately and facsimile was obtained on NCB form also. The case property was sent to *Malkhana* and PW-5-HC Prem Singh made its entry in *Malkhana register ExPW-5/A*. On 30.03.2010, sealed parcel containing contraband alongwith other documents, NCB form and sample seals were sent to Forensic Science Laboratory, Junga through PW-7-HHC Parma Dev vide Road Certificate *ExPW-5/B* and the case property was deposited with

FSL and after receipt of the report from Chemical Examiner, *Ex. PW-10/B*, the recovered contraband was verified to be *Cannabis-Charas*. During investigation special report *Ex. PW-4/A* was delivered to Additional Superintendent of Police, Mandi, through PW-6 Constable Hem Raj and PW-4 HHC Sant Ram, who made the entry of special report in Special Report Register *Ex. PW-4/B*.

2(ii). With reference to the above incident and based on the investigation carried out by the investigating agencies, the Final Police Report-Challan was prepared by PW-8 SI Sohan Singh, on 13.05.2010 and the aforesaid *challan* was submitted to Learned Special Judge concerned.

2(iii). On 04.12.2012, Learned Special Judge (1), Mandi [HP] framed the "*Charge*" against Respondent-Accused and upon his pleading not guilty, the trial commenced, in which the prosecution examined ten witnesses. On closure of prosecution evidence, the statement of the Respondent-Accused under Section 313 of the Code of Criminal Procedure was recorded on 14.03.2014, by Learned Special Judge.

3. Pursuant to the trial conducted by Learned Special Judge (1), Mandi, the Respondent-accused was acquitted in terms of the judgment dated 16.03.2015, ***{referred to as the Impugned Judgement}***, with the finding that prosecution has failed to prove that the mandate of Section 50 of NDPS Act was complied with before conducting the personal search of the respondent-accused and due to non-compliance of Section 50, recovery from the alleged possession of the accused was vitiated and non-disclosure of legal right to the accused for personal search either before a Gazetted officer or a Magistrate as per Section 50 of NDPS Act was fatal to the case of the prosecution and since the prosecution has failed to prove this point, therefore, the Respondent-Accused was acquitted of the charge framed against him, under Section 20 of the NDPS Act.

4. **CONTENTION OF LEARNED COUNSEL FOR APPELLANT STATE :**

Learned State Counsel has contested the appeal on the ground that Learned Trial Court had acquitted the accused by drawing conclusion based on surmises and conjectures and by appreciating

the evidence in slipshod and perfunctory manner ; and Learned Trial Court had failed to evaluate the prosecution evidence in its true perspective ; and the reasoning given by Learned Trial Court is manifestly and unreasonable and unsustainable ; and material evidence on record has been disregarded by Learned Trial Court ; with the further plea in Para-6 of the grounds of appeal, that as per evidence of prosecution witnesses, PW-1 [Constable Ashwani Kumar], PW-8 [SHO-SI Sohan Singh], PW-9 [ASI-IO-Orender Singh], PW-4 [HHC Sant Ram], PW-5 [HC Prem Singh] and the exhibited documents establish and even FSL has corroborated that the recovered contraband was Cannabis-Charas, therefore, the offence stands proved against the respondent-accused beyond all reasonable doubts.

**CONTENTION BY LEARNED COUNSEL FOR
RESPONDENT-ACCUSED:**

5. Per contra, Learned Counsel for Respondent-Accused has supported the Impugned Judgment dated 16.03.2015, by reasserting that the alleged contraband was recovered, upon personal search of the body of the respondent-accused but the aforesaid personal

search was conducted, *firstly*, by not disclosing the availability of a legal right to the respondent-accused to have his personal search either before a nearest Gazetted Officer or to the nearest Magistrate, and *secondly*, that PW-9-IO Orender Singh had erred in giving three options to the respondent-accused for personal search before himself-police or before nearest Gazetted Officer or nearest Magistrate and the third alternative option so given reveals non-compliance of Section 50 of the NDPS Act, so as to render alleged recovery affected upon personal search of the body of the respondent-accused inadmissible in evidence. Besides this, it is contented that the testimony of PWs negates the prosecution story.

6. Heard, Mr. P.K. Nadda, Learned Additional Advocate General for the Appellant-State and Mr. Chaman Negi and Ms. Kanta Thakur, Learned Counsel, for the Respondent-Accused.

7. Before analyzing the rival contentions, this Court, feels it appropriate to have a recap of the mandate of law, as to what statutory compliances are stipulated under Section 50 of the NDPS Act

before conducting the personal search of the body of an accused under NDPS and what would be the effect of its non-compliance, have been spelt out by in the following judgements.

**MANDATE OF LAW ON STATUTORY COMPLIANCES
IN SECTION 50 OF NDPS ACT AND EFFECT OF
NON-COMPLIANCE:**

7(i). While dealing with the issue as to what are the statutory compliances stipulated in Section 50 of NDPS Act and what would be the effect of its non-compliance has been answered by Constitutional Bench of the Hon'ble Supreme Court in ***State of Punjab versus Baldev Singh, (1999) 6 SCC 172,*** by mandating that it is imperative on the Investigation Officer to disclose the availability of a right to the accused to be searched before the nearest Gazetted Officer or nearest Magistrate and the omission of Investigating Officer to conduct the personal search before a nearest Gazetted Officer or a Magistrate, would cause inherent prejudice to an accused and 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 illicit article, recovered during a search conducted in violation of Section 50 of NDPS Act and the effect of the non-compliance of Section 50 shall render the incriminating material allegedly recovered as inadmissible in evidence and the same cannot be relied upon to hold the accused guilty for being found to be in unlawful possession of any contraband, *in the following terms:-*

“32. However, the question whether the provisions of Section 50 are mandatory or directory and if mandatory to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, ***we hold that the provisions of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty on the Investigating Officer*** (empowered officer) to ensure that search of the concerned person (suspect) is conducted in the manner prescribed by Section 50, ***by intimating to the concerned person***

about the existence of his right, that if he so requires, he shall be searched before a Gazetted Officer or a Magistrate and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, would cause prejudice to an accused and 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 during a search conducted in violation of the provisions of Section 50 of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable. ***The protection provided in the section to an accused to be intimated that he has the right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires, is sacrosanct and indefeasible it cannot be disregarded by the prosecution except at its own peril.***

33. The question whether or not the safeguards provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that

issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial.

55. We, therefore, ***hold that*** an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Act, cannot by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused. Any other material/article recovered during that search may, however, be relied upon by the prosecution in other/independent proceedings against an accused notwithstanding the recovery of that material during an illegal search and its admissibility would depend upon the relevancy of that material and the facts and circumstances of that case.”

7(ii). While dealing with effect of non-compliance of Section 50 of NDPS Act, the Constitutional Bench of the Hon’ble Supreme Court in **Vijaysinh Chandubha Jadega versus State of Gujrat (2011) 1 SCC 609**, held that it is mandatory that the accused is made

aware of existence of right to be searched before a Gazetted Officer or Magistrate (orally or in writing) but failure to inform the suspect of such a right would cause prejudice to him an accused and the non-compliance will render recovery of illicit article suspect and vitiate the conviction and sentence of an accused. The safeguards in Section 50 have been introduced so as to check misuse of power and to prevent innocent persons being implicated by plating false cases. The obligation of the authorized officer, including police officer to comply with Section 50 is mandatory and requires strict compliance, so as to impart authenticity, transparency and creditworthiness to the entire proceedings and to add legitimacy to the search proceedings, *in the following terms :-*

24. Although the Constitution Bench 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 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted 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 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 the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted 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 gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

29. In view of the foregoing discussion, 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 minimise

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. We have no hesitation in holding that in so far as the obligation of the authorised 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.

MANDATE OF LAW-GIVING OF THIRD OPTION FOR PERSONAL SEARCH VITIATES RECOVERY:

8. While dealing with obligation of authorized person, including police officer “to inform or disclose” the accused of his right for personal search before a Gazetted Officer or a Magistrate under Section 50 of the NDPS Act, the Hon’ble Supreme Court in ***Suresh and others versus State of Madhya Pradesh,***

(2013) 1 SCC 550, mandated that merely asking an accused to give his consent for personal search, either before a police officer or Gazetted Officer or Magistrate does not conform to the safeguards stipulated under Section 50 of the Act, and its non-compliance shall render the recovery of alleged contraband suspect, which cannot form basis for conviction of an accused, *in the following terms:-*

- “16. The above Panchnama indicates that the appellants were **merely asked to give their consent for search** by the police party **and not apprised of their legal right** provided under Section 50 of the NDPS Act to refuse/ to allow the police party to take their search and opt for being searched before the Gazetted officer or by the Magistrate. In other words, a reading of the Panchnama makes it clear that the appellants were not apprised about their right to be searched before a Gazetted officer or a Magistrate but consent was sought for their personal search. **Merely asking them as to whether they would offer their personal search to him i.e., the police officer or to Gazetted officer may not satisfy the protection afforded under Section 50** of the NDPS Act as interpreted in ***Baldev Singh's case***.

17. Further a reading of the judgments of the trial Court and the High Court also show that in the presence of Panchas, the SHO merely asked all the three appellants for their search by him and they simply agreed. This is reflected in the Panchnama. Though in *Baldev Singh's case*, this Court has not expressed any opinion as to whether the provisions of Section 50 are mandatory or directory but "*failure to inform*" the person concerned 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. In ***Vijaysinh Chandubha Jadeja's case (supra)***, recently the Constitution Bench has explained the **mandate provided under sub-section (1) of Section 50 and concluded that it is mandatory and requires strict compliance.** The Bench also held that 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. The concept of substantial compliance as noted in *Joseph Fernandez* and *Prabha Shankar Dubey* were not acceptable by the Constitution Bench in *Vijaysinh Chandubha Jadeja*, accordingly, in view

of the language as evident from the panchnama which we have quoted earlier, we hold that, in the case on hand, **the search and seizure of the suspect from the person of the appellants is bad and conviction is unsustainable** in law.”

8(i). While upholding the acquittal, where an offer was made by authorized officer, including a police officer, requiring or asking an accused to be searched by police officer, in addition to Gazetted officer or Magistrate, the Hon’ble Supreme Court has held in ***State of Rajasthan v. Parmanand and another, (2014) 5 SCC 345***, that the aforesaid offer for personal search before an Investigating Officer or a police as a third alternative, defeats the protection granted for being searched before an independent officer, which is contrary to Section 50 of NDPS Act, when, the Statute expressly contemplates personal search by either of the two expressly named persons i.e. a Gazetted Officer or a Magistrate only, *in the following terms:-*

“16. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were

informed that they have a right to be searched before a nearest Gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent No.2-Surajmal is stated to have signed for himself and for respondent No.1 – Parmanand. Respondent No.1 Parmanand did not sign.

19. We also notice that **PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party.** It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. ***The idea behind*** taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, ***is to give him a chance of being searched in the presence of an independent***

officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a **third alternative** was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. **But PW-10 SI Qureshi could not have given a third option** to the respondents when Section 50(1) of the NDPS Act does not provide for it and **when such option would frustrate the provisions of Section 50(1) of the NDPS Act.** On this ground also, in our opinion, the **search conducted by PW-10 SI Qureshi is vitiated.** We have, therefore, no hesitation in concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The **conviction of the respondents was therefore, illegal.**

8(ii). While dealing with validity of third option-alternative for personal search of an accused under NDPS Act, before a police officer, has been answered by the Hon'ble Supreme Court in negative in **Ranjan Kumar Chadha versus State of Himachal Pradesh,**

2023 SCC Online SC 1262, mandating Section 50 of NDPS Act only contemplates for giving option for being personal search before a Gazetted Officer or a Magistrate and it is improper for police to ask the accused to exercise the third alternative-option for his search before a police officer, *in the following terms:-*

- “25. What is pertinent to note in the oral evidence of PW 12 and PW 14 respectively referred to above, is that the ***appellant herein was told or rather informed*** that if he so desired, ***he may get himself searched before the ASI or before the Gazetted Officer or Magistrate.*** Thus, it is evident from the oral evidence of both PW 12 and PW 14 that ***three options were given to the appellant*** herein-**first** to be searched before the ASI i.e. Assistant Sub-Inspector, **second**, before the Gazetted Officer and **third**, before any Magistrate. It is also pertinent to note that the appellant was not informed in so many words that it is his right under Section 50 of the NDPS Act to seek search before a Gazetted Officer or Magistrate.
27. We have no hesitation in recording a finding that ***Section 50 of the NDPS Act was not complied with as the appellant could not have been offered the third option of search to be conducted before the ASI.*** Section 50

of the NDPS Act only talks about a Gazetted Officer or Magistrate. **What is the legal effect** if an accused of the offence under the NDPS Act is being told, whether he would like to be **searched before a police officer or a Gazetted Officer or Magistrate?**

29. Thus, from the oral evidence on record as discussed above it is evident that **Section 50 of the NDPS Act stood violated for giving a third option of being searched before a police officer.**
49. As to what would be the consequences of a recovery made in violation of Section 50, it was observed in *Baldev Singh* (supra) that it would have the effect of rendering **such incriminating material inadmissible in evidence and hence, cannot be relied upon to hold the accused guilty** for being found to be in unlawful possession of any contraband. The Court further held that it would not impede the prosecution from relying upon recovery of any other incriminating article in any other independent proceedings. It was further held that the burden of proving that the conditions of Section 50 were complied with, would lie upon the prosecution to establish...
51. Thus, the Constitutional Bench in express terms laid down that although the non-compliance of Section 50 may not vitiate

the trial yet ***would render the recovery of the contraband doubtful and may vitiate the conviction of the accused.***

The emphasis laid by the Court is on illicit articles seized from the “person of an accused” during the search conducted in violation of safeguards provided in Section 50 of the NDPS Act. In other words, according to *Baldev Singh* (supra), the ***provisions of Section 50 will come into play only in the case of personal search*** of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying.

66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-

- (i) Section **50 provides both a right as well as an obligation.** The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to **inform such person of this right before proceeding to search the person of the suspect.**
- (ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect ***declines to exercise his right*** of being searched before a Gazetted Officer or Magistrate, **the empowered officer should take it**

in writing from the suspect that he would not like to exercise his right

of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

- (iii) **Before conducting a search**, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.
- (iv) While informing the right, **only two options** of either being searched in presence of a Gazetted Officer or Magistrate must be given, **who also must be independent and in no way connected to the raiding party.**
- (v) to (ix)not relevant...
- (x) *Any incriminating contraband*, possession of which is punishable under the NDPS Act and **recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial** by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”

8(iii). The principle of law declared in the case of **Ranjan Kumar Chadha** (supra) has been reiterated by the Hon’ble Supreme Court in **State of Himachal**

Pradesh v. Surat Singh [Criminal Appeal No.96 of 2018, decided on 16.03.2026, **2026 SCC Online SC 376**, that the third option for personal search before a Police Officer given in addition to search before a Gazetted Officer or a Magistrate and this non-compliance and departure from the provision of law is contrary to the express mandate of Section 50 of the NDPS Act, in the following terms:-

17. The High Court vide its judgement dated 08.10.2015 acquitted the respondent-accused while observing as under:

17. "The accused was apprehended on 13.03.2013 while carrying a bag. However, despite that his personal search was carried out. The police has **given option** to the accused either to be personally searched before the Magistrate or the Gazetted Police Officer. **The accused was also given option whether he wanted to be searched by the I.O.** in the presence of witnesses mentioned in Ext. PW-1/A. According to Section 50 of the ND & PS Act, the accused has to be apprised of his legal right to be searched either before the Magistrate or the Gazetted Officer. **There is no third option to be searched before the Police Officer.** Thus, the consent obtained from the accused was not in

conformity with Section 50 of the Act.
It has vitiated the entire trial.

18. The oral testimony of the witnesses clearly established that the Investigating Officer took a departure from the provisions of law and on the contrary committed an act which is clearly contrary to the provisions of law. It may not be out of place to state at the cost of repetition that the testimony of PW-8 reveals that there was no electronic weighing scale available in the shop and he was using only the traditional weighing scale as such the story of prosecution that an electronic weighing scale was used for weighing the contraband article charas falls flat on the face of it and the version of the prosecution and the story of the prosecution becomes doubtful and ultimately unacceptable. ***The High Court was also justified in placing reliance on the judgment of this Court in [State of Rajasthan versus Parmanand and Anr](#), in support of the conclusions drawn by it.***
19. Thus, in our opinion, the present ***appeal is devoid of merits*** and deserves to be dismissed. Accordingly, the same is hereby dismissed.

8(iv). While dealing with a similar fact-situation, the acquittal for non-compliance of Section 50 of NDPS Act was upheld by the Division Bench of this

Court in ***State of Himachal Pradesh v. Anil Kumar alias Rinku*** [Criminal Appeal No.478 of 2015], decided on 25.03.2026, in the following terms:-

- “11. According to PW-2, police had left the Police Station at 2:20 P.M., whereas according to PW-9, police party left the Police Station at about 11:00 A.M. and reached Hanogi Mata at 12:00 noon. According to the challan presented in the Court as also stated in the ruqua, on the basis of which FIR has been registered, it has been stated that respondent was overpowered on the basis of suspicion of having stolen property with him, but at the same time it has been further stated that area was secluded and, therefore, independent witness was not available. Therefore, officials were associated as witnesses and after giving jamatalashi by the police party to the said person, **consent of respondent was obtained**, as provided under Section 50 of NDPS Act and, thereafter, **personal search of the respondent was conducted**.
12. In the Court, PW-9 has stated that he asked the respondent as to whether he was having some NDPS substance and therefore, he wanted to search him, whereupon consent was given by the respondent and respondent was searched.
18. According to prosecution, contraband was recovered from the person of the respondent.

Consent memo depicts that it was stated to the respondent by PW-9 that he had a doubt that respondent was having some narcotic drug, therefore, he intended to search the respondent and, thereafter, respondent was ***asked to give consent*** for search to some Magistrate or Gazetted Officer by stating that it was the right of the respondent under NDPS Act.

21. As per consent alleged to be given by the respondent, it has been stated that respondent had stated that he voluntarily wanted to give his search to the Investigating Officer.
23. In present case, respondent did not decline to exercise his right, ***rather his consent has been recorded for giving search to the Investigating Officer.*** As per mandate of the Apex Court that only two options are to be given to the respondent and any ***third option will vitiate the proceedings.*** In present case, there is nothing on record in writing that respondent declined to exercise his right, rather a third option appears to have been given, as evident from the consent alleged to have been recorded in the consent memo. The memo is not in consonance with the requirement envisaged by Section 50 of NDPS Act, as summarized in ***Ranjan Kumar Chaddha's case*** and therefore also, the trial vitiates.

25. In view of above discussion, we are of the considered opinion that respondent deserves benefit of doubt and we do not find any ground for interfering in the judgment of acquittal for the reasons stated here-in-above.”

ANALYSIS:

9. Taking into account the entirety of facts and circumstances, the evidence on record and the mandate of law, this Court is of the considered view that the Impugned Judgment dated 16.03.2015 passed by Learned Special Judge, acquitting the Respondent -accused, in Sessions Trial No. 48 of 2010, titled as State of Himachal Pradesh versus Tara Chand, does not suffer from any infirmity or illegality, *for the following reasons:-*

9(i). The prosecution story is, that a police patrolling party headed by PW-9 ASI Orender Singh; PW-1 Constable Ashwani Kumar ; PW-2 HHG Brahma Nand and HHG Baldev had gone in a Government vehicle towards Ghatasni, near Kupardhar at about 08:10 a.m. During patrolling a vehicle, tempo-trax bearing registration No. HP-01 M-3704, came on the spot, which was full of passengers. The vehicle was

stopped by the police for checking. On seeing the police party, Respondent-accused who was sitting on backside of vehicle became perplexed. On suspicion, Respondent-accused was directed to alight from the vehicle and his pant was found bulging out, and the accused was suspected having some contraband inside his pant. The police party associated PW-3 Ajay Guleria and Bhim Chand (owner of temp tax-vehicle) as witness to the incident. *The consent of the Respondent-accused for his personal search was obtained* **vide Consent memo Ex. PW-1/A.** The police conducted the personal search of respondent-accused by making him to remove his pant-jeans, when, a packet wrapped with cello tape was recovered from the areas near the private parts of body of accused and the same was found to be containing black substance in the shape of sticks and after smelling and testing the same came out to be Cannabis-Charas, and as per the Identification Memo vide *Ex. PW-1/C*, and on weighing, the contraband was found to be 450 grams. After recovery, upon personal search of the respondent-accused and after completing

codal formalities, the Investigating Officer prepared *Rukka Ex. PW-9/A* and the FIR *Ex. PW-8/A* was registered on 29.03.2010 and respondent-accused was arrested vide arrest memo *Ex. PW-9/D* on 29.03.2010 at 01:30 p.m.

9(i-a). Perusal of the Consent Memo for personal search, *Ex PW-1/A dated 29-03-2010* establishes that PW-9 [Orender Singh, IO] had given the third option-alternative to the respondent-accused for his personal search either before him [Orender Singh, IO] or a Gazetted Officer or a Magistrate, in the following terms:-

Translation of Ex PW-1/A

“Police Station Padhar at Drang

Consent memo for personal search:

I, HC Orender Singh, I.O. Police Station, Padhar, District Mandi, do hereby informs Tar Chand son of Shri Setu Ram, Caste: Rajput, Village Graman, Post Office Shilh Badhani, Tehsil Padhar, District Mandi that you are suspected to be in possession of psychotropic substance for which you are liable to be personally search. Accordingly, you are informed of the right for personal search, if so desired, **by me or other Gazetted Officer or a Magistrate.**

Sd/-
Orender Singh, I.O.
P.S. Padhar dt 29/03/2010

Red Mark A

I want my personal search
to be done by you-police

Red Mark A

Sd/- (in Hindi)
TARA CHAND

Witness

Sd/- (in Hindi)

Bhim Chand

S/o Sh Radhe Lal

Tehsil Padhar, District Mandi.

Witness

Sd/- (in English)

Ajay Guleria

S/o Sh. Inder Singh,

Village Balakrupi, P.O.

Joginder Nagar, District

Mandi.

Witness

Sd/-

Constable Ashwani Kumar

No.165, Police Station,

Padhar, District Mandi.

Seal of Court

EX PW/1/A dated 19.08.2013

Court of Special Judge,

Mandi (HP)

Attested

Sd/-

Orender Singh

I.O. P.S. Padhar,

Dt. 29.03.2010”

**GIVING THIRD OPTION FOR PERSONAL SEARCH
AND THAT TOO BEFORE RAIDING PARTY RENDERS
RECOVERY INADMISSIBLE IN EVIDENCE :**

9(i-b). Perusal of Consent Memo, Ex PW-1/A, for personal search reveals that PW-9 Investigating Officer [Orender Singh] has given a third option-alternative to the respondent-accused for personal search before him, a police officer [PW9-Orender Singh, IO], who was a member of the raiding party.

In this backdrop, the personal search of the respondent-accused, cannot sustain for the reason, **firstly**, Section 50 of NDPS Act provides for personal search before either of the “two designated officers” i.e. before a Gazetted Officer or a Magistrate and “giving of third option-alternative” for personal search before a police officer” is not contemplated under Section 50 of the Act. Investigating Officer took a departure from the express provisions of law and Investigating Officer had committed an act contrary to the provisions of law; and **secondly**, action of Investigating Officer, PW-9 Orender Singh, in giving an option, Ex PW-1/A, to the accused for personal search before him, a police officer, who was a member of raiding party, defeats the protection granted to accused for personal search before an independent officer; and **thirdly**, it is improper for an Investigating Officer (PW-9) to have even asked an accused for personal search before third option-alternative, i.e. before a police officer, who was a member of raiding party; and **fourthly**, the action of Investigating Officer (PW-9) in giving three options-

alternatives for personal search and that too before a member of the raiding party, defeats the protection and safeguards conferred to an accused for personal search before independent designated officers (Gazetted Officer or Magistrate}, under the Act ; and **fifthly,** action of Investigating Officer (PW-9) in giving three options-alternatives for personal search and that too before a member of the raiding party is contrary to the object and intent of Section 50 of NDPS Act; and **sixthly,** perusal of the deposition of PW-9 Orender Singh I.O.] establishes that he obtained the consent of respondent-accused vide memo *Ex PW-1/A* regarding his personal search by the police party present at the spot, as per endorsement in red-circle marked as A to A on the consent form *Ex PW-1/A*. PW-9 [Orender Singh I.O.] has deposed that he gave three options-alternatives to the respondent-accused for personal search by him i.e. PW-9-Investigating Officer or a Gazetted Officer or a Magistrate. Even PW-1 [C, Ashwani Kumar, a member of raiding party], deposed that PW-9, {Orender Singh IO} asked for consent and respondent-accused consented for his personal

search by police party-IO present on the spot ; and **seventhly,** compliance of Section 50 is mandatory and non-adherence of the pre-requisites for personal search mandated under Section 50 of NDPS Act shall render the incriminating material so recovered upon personal search of an accused as inadmissible in evidence and such material cannot be relied upon to hold the accused as guilty, as per the mandate of law declared by the Constitutional Bench of the Honble Supreme Court in ***Baldev Singh and Vijay Singh Chandubha*** (supra); and **eighthly,** action of giving three options-alternatives for personal search and/or before a member of raiding party is contrary to the law declared by the Honble Supreme Court in cases of ***Suresh, Parmanand, Ranjan Kumar Chadha and Surat Singh*** (supra); and **lastly,** on facts of instant case, a perusal of Seizure-Memo, Ex.PW-1/E, dated 29-03-2010 reveals that the alleged contraband {Cannabis-Charas, 450 grams} seized upon personal search (conducted contrary to norms) was the only contraband and no other contraband existed, therefore, alleged contraband so recovered {contrary

to law}, is inadmissible in evidence and the said recovery cannot be relied upon against the respondent-accused to hold him guilty.

In this backdrop, Learned Special Judge has committed no error in acquitting the respondent-accused of the offence under Section 20 of the NDPS Act, for non-compliance of Section 50 of the NDPS Act.

**FAILURE OF PROSECUTION TO INFORM-DISCLOSE
OF RIGHT FOR PERSONAL SEARCH BEFORE
GAZETTED OFFICER OR MAGISTRATE VITATES
RECOVERY:**

10. PW-9 [Orender Singh I.O.] deposed in cross-examination that he did not apprise the respondent-accused of his right to be searched before a Gazetted Officer or Magistrate.

Even, PW-1 [C, Ashwani Kumar, a member of raiding party], deposed that PW-9, {Orender Singh IO} asked for consent and the respondent-accused consented for his personal search by the police party present on the spot. In cross examination, PW-1 [C, Ashwani Kumar], has testified that before obtaining consent of accused, the PW-9 {Orender Singh IO} has not informed respondent-accused of his legal right

for his personal search before a Gazetted officer or a magistrate despite the fact that various Gazetted Officers and Magistrates were available at Jogindrnagar (nearest place) but no efforts were made by PW-9 {Orender Singh IO} to take the accused to either of them.

Non-disclosure of right for personal search before any of the “two designated officers” named in Section 50 of NDPS Act i.e. a “Gazetted Officer or Magistrate”. Informing or disclosure of such a right to an accused for personal search before either of two designated officers is sacrosanct and indefeasible is imperative. The prosecution cannot disregard to inform or disclosure the availability of such a right for personal search before either of two named designated officers. The omission of the prosecution to inform or disclose to an accused of such valuable right, shall certainly deprive an accused of the resultant protection contemplated under the Act and shall prejudice an accused. Omission to inform or disclose such a right is mandatory in terms of the law declared by the Honble Supreme Court in

Baldev Singh and Vijay Singh Chandubha (supra).

The alleged recovery effected, upon personal search conducted illegally, without disclosing such a right cannot sustain and said recovery cannot be used or relied upon against an accused. Accordingly, the Impugned Judgement passed by Learned Special Judge acquitting the respondent-accused herein, does not suffer from any infirmity or illegality.

GLARING INFIRMITIES AND DISCREPANCIES IN PROSECUTION CASE:

11. PW-9 [Orender Singh I.O.] deposed that all the memos, i.e. Consent memo Ex.PW-1/A with mark A to A, and the Search memo, Ex PW-1/B, and Identification memo, Ex.PW-1/C and the seizure memo Ex. PW-1/E, were prepared in presence of witnesses. Once PW-1, C Ashwani Kumar, PW-3 Ajay Guleria, and Bhim Chand were the attesting witness to these memos then, non-examination of one of the attesting witness {Bhim Chand}. Even no explanation has been offered by prosecution for not examining the aforesaid independent witness, is a glaring infirmity-discrepancy in the process of seizure. Non-examination of attesting independent witness and absence of any explanation

for their non-examination, creates doubt about the seizure of contraband, in terms of the mandate of law declared by the Honble Supreme Court in the case of **Mohammad Khalid and another versus State of Telangana (2024) 5 SCC 393** {Para 21} and similar view has been taken in the case of **Nadeem Ahmed vs State of West Bengal, 2025 SCC Online 1779** {Para 28 (d)} rendering the prosecution story incredible.

11(i). Besides this, even the non-examination of Tula Ram, shopkeeper from whom the police personnel brought the wights and measure and non-examination of HHG Baldev, another member of the patrolling party creates doubt about the entire process.

11(ii). Even deposition of PW-3 [Ajay Guleria, an independent witness} has deposed that he had not read the contents of consent memo Ex Pw-1/A and its encircled portion “A to A” before signing it and contents of the consent memo and its endorsement A to A were not read over to him by PW-9 {Orender Singh, IO}, before obtaining his signatures.

11(iii). Grave discrepancy in time of search and seizure exists, whereby, PW-2 [C Ashwani Kumar, a

member of patrolling party], deposed that he started checking the vehicle at 9.45 am and after 5 minutes (09.50 am), the vehicle in which accused was travelling reached the spot whereas on the other hand, PW-9 [Orender Singh, IO] deposed in cross examination that all proceedings i.e. checking of vehicle, search and seizure were completed between 8.10 to 8.50 am.

11(v). Another glaring discrepancy is regarding Rukka and registration of FIR. It has come on record that PW-9, Orender Singh, IO stated that he prepared Rukka, Ex PW-9/A, on 29-03-2010 at 10.15 am whereas PW-1 [C, Ashwani Kumar], deposed that he brought the Rukka from Kuferdhar (spot of alleged incident) at 12.00 noon by taking lift in a private vehicle. Rukka reveals that the distance from Kupardhar to Police Station Padhar was 33 Kilometers whereas the FIR Ex PW-1/8, was registered on 29-03-2010 at 12.05 noon. Factum as how could PW-1, Ashwani Kumar reached with the Rukka from the spot i.e. Kupardhar to PS Padhar i.e. to a distance of 33 Kms, within 5 minutes and that too in a hilly terrain creates doubt about the prosecution story.

In aforesaid circumstances, the Impugned judgment dated 16.03.2012 passed by Learned Special Court, acquitting the Respondent-Accused does not suffer from any perversity and illegality.

DIRECTIONS:

12. In view of the above discussion and for the reasons recorded hereinabove, ***instant appeal*** is dismissed, *in the following terms:*

- (i) ***Criminal Appeal*** No 406 of 2015, titled as State of Himachal Pradesh versus Tara Chand, ***is dismissed*** ;
- (ii) Impugned Judgment dated 16.03.2015 passed in Sessions Trial No 48 of 2010 by Learned Special Judge (1) Mandi [HP], ***is upheld*** ;
- (iii) Acquittal of the respondent-accused is reiterated.

In the aforesaid terms, the instant appeal and all pending miscellaneous application(s), if any, shall accordingly stand disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

April 06, 2026
[Bhardwaj]