



Crl.Appeal No.288/2007

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 4TH DAY OF JUNE 2026 / 14TH JYAISHTA, 1948

CRL.A NO. 288 OF 2007

AGAINST THE JUDGMENT DATED 02.02.2007 IN SC NO.17 OF 2005 OF
SPECIAL COURT (NDPS ACT CASES), VADAKARA

APPELLANT/ACCUSED:

BICHATHU,
W/O. MUHAMMED @ MANI, 50/04, HOUSE NO.1/2711,
BENGLADESH COLONY, WEST HILL BEACH,
PUTHIYANGADI AMSOM DESOM.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
THROUGH THE SUB INSPECTOR OF POLICE, NADAKKAVU POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

BY SENIOR PUBLIC PROSECUTOR SRI ALEX M.THOMBRA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
26.05.2026, THE COURT ON 04.06.2026 DELIVERED THE FOLLOWING:



“CR”

A. BADHARUDEEN, J.

Crl.Appeal No.288 of 2007

*Dated this the 4th day of June, 2026****J U D G M E N T***

The sole accused in S.C.No.17/2005 on the files of the Special Court under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short hereafter) has filed this appeal challenging conviction and sentence imposed against her in the said case as per judgment dated 02.02.2007.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor. Perused the verdict impugned as well as the records of the trial court.

3. In this case the prosecution alleges commission of offence punishable under Section 21(b) of the NDPS Act by the accused/appellant on the premise that 25.400 grams of brown sugar meant for sale was recovered from her conscious possession at 2.30 p.m on 17.11.2004.



4. The Special Court ventured the matter. PW1 to PW7 were examined and Exts.P1 to P14 were marked on the side of the prosecution. On the side of defense, DW1 was examined. On meticulous analysis of the evidence, the Special Court found that the accused had committed the offence punishable under Section 21(b) of the NDPS Act and accordingly she was sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months.

5. While assailing the verdict imposed by the Special Court, the learned counsel for the appellant/accused raised only one point to unsustain the same. The point urged is that Section 50 of the NDPS Act not at all complied while conducting search and therefore the entire prosecution is vitiated. Thus the appellant/accused is entitled for acquittal.

6. Whereas it is submitted by the learned Public Prosecutor that in this case, on perusal of the prosecution case, the total quantity of brown sugar contained in 41 very small plastic covers and 2 other long plastic covers were recovered and the recovery is not the outcome of any body search or search of a person and therefore Section 50 of the NDPS



Act has no application in the instant case. Otherwise as per Ext.P2 the accused waived her right within the ambit of Section 50 of the NDPS Act. Therefore, the prosecution succeeded in proving the ingredients for the offence punishable under Section 21(b) of the NDPS Act and therefore the conviction and sentence are liable to be sustained.

7. In view of the rival submissions the points arise for consideration are:

(i) Whether the contention raised by the learned counsel for the appellant/accused that the prosecution failed to comply with the mandate of Section 50 of NDPS Act is sustainable?

(ii) Whether the Special Court is justified in holding that the appellant/accused committed the offence punishable under Section 21(b) of the NDPS Act?

(iii) Is it necessary to interfere with the impugned judgment in any manner?

(iv) The order to be passed?

Point No.(i)

8. Insofar as non compliance of Section 50 of the NDPS Act, the Special Court considered the same in paragraph 14 of the verdict impugned and held that Section 50 of the NDPS Act would not apply in the present case because brown sugar was not seized on body search of the



accused. Now it is relevant to refer Section 50 of the NDPS Act, which reads as under:

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

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

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

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

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer



or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

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

9. The mandate of Section 50 is clear from the legislative intent itself that, when any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate. So it is discernible from the phraseology of the Section that for search of a person, Section 50 to be complied and if search is otherwise, Section 50 has no application. In this connection a recent decision of the Apex Court reported in [2023 KHC OnLine 6891 : 2023 KHC 6891 :2023 (6) KHC SN 34 :2023 (2) KLD 625 :2023 INSC 878 : 2023 LiveLaw (SC) 856 :2023 SCC OnLine SC 1262 :2023 (4) KLJ 918 : 2023 KLT OnLine 1988 :AIR 2023 SC 5164 :AIR OnLine 2023 SC 818 : 2024 (1) KLT SN 212023 KHC 6891], ***Ranjan Kumar Chadha v. State of Himachal Pradesh***, is having



relevance where the Apex Court considered the impact of Section 50 of the NDPS Act with reference to earlier judicial pronouncements and finally held that any recovery made from source other than the body would not warrant compliance of Section 50 of the NDPS Act and non-compliance necessarily is of no significance in such cases. In **Ranjan Kumar Chadha**'s case (*supra*), referring the Constitution Bench decision in [1999 (3) KLT SN 4 :1999 (6) SCC 172 :AIR 1999 SC 2378 :1999 CriLJ 3672] **State of Punjab v. Baldev**, in paragraph No.49 it has been held as under:

*“49. Thus, the Constitutional Bench in express terms laid down that although the non- compliance of S.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 S.50 of the NDPS Act. In other words, according to **Baldev Singh** (*supra*), the provisions of S.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.”*

It was held in paragraphs 63, 64 and 97 as under:



“63. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under S.50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that "I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with S.50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer." This would lend more credence to the compliance of S.50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

64. From the aforesaid discussion, the requirements envisaged by S.50 can be summarised as follows: -(i) S.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) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of S.50.

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97. Accordingly, S.50 was read to be understood as applicable only to the personal search of a person and that would not extend to search of a vehicle or a container or a bag. The language of S.50 was interpreted to include search in relation to a person and not to a search of premises, vehicles or articles.”

In the instant case, as found by the learned Special Judge, recovery was



not on the basis of body search and it was from the plastic bags carried by the person and therefore Section 50 has no application. Otherwise as per Ext.P2 tendered in evidence through PW1, the accused waived the right to be searched before a Gazetted officer or a Magistrate. Therefore, the contention as to non-compliance of Section 50 mooted by the learned counsel for the appellant/accused is found to be unsustainable.

Point Nos.(ii) to (iv)

10. PW1 examined in this case is the Assistant Sub Inspector of Police, who detected the offence and PW2 is the woman Circle Inspector of Police, who had assisted the Assistant Sub Inspector of Police during detection of the crime and recovery of the contraband. PW1 and PW2 gave categorical evidence in this case as regards to the recovery. PW1 deposed that at about 2.00 p.m on 17.11.2004 he got secret reliable information that brown sugar was being sold by the appellant/accused in front of her house and immediately he had sent Ext.P1 report to the Circle Inspector and proceeded to the spot with police party including the woman Circle Inspector examined as PW2. According to him, at about 2.30 p.m the police party reached at Bangladesh colony, Kozhikode and found the



accused standing at the by-lane road in front of her house, carrying a plastic bag in her hands. When she saw the police party, she made an attempt to escape from there and also to conceal the plastic bag. Immediately she was intercepted by PW2 and with her assistance PW1 searched the plastic bag carried by the accused in her hand and examined the contents of the bag. According to PW1, before search, the accused was informed of her right to be searched in the presence of a gazetted officer or Magistrate but the accused gave her consent for search in their absence and Ext.P2 is the written consent so given. When the plastic cover was searched, he found brown sugar in 2 long plastic covers and 41 small plastic covers. On weighing it was found that 43 packets contained 25.400 grams of brown sugar and accordingly the accused was arrested from the spot in the presence of witnesses. He also deposed about the recovery after preparing Ext.P5 seizure mahazar. He also deposed that from the 41 very small packets of brown sugar he took 2 samples consisting of 10 packets each, and the sample packets were well packed and sealed according to law. The other 21 small packets of brown sugar and the two long packets of brown sugar were also well packed and sealed according to



law, and labels containing the signatures of the witnesses and the thumb impression of the accused were affixed on all sealed packets. The samples containing 10 small packets each were marked as S1 and S2, and the other, sealed packet was marked P1. The accused and the properties were taken to the Police station where Ext.P6 FIR was registered against her, and there after he had sent Ext.P7 detailed report to the Circle Inspector. PW1 identified the accused at the dock as the person who was arrested after seizure of the contraband.

11. PW2, who assisted PW1 in recovery and detection of this crime, in fact, supported the version of PW1 in tune with the prosecution allegation without any ambiguity.

12. Ext.P5 seizure mahazar and its contents were proved, not only by the evidence of PW1 but also by the evidence of independent witness examined as PW3. Apart from that PW4 who fully supported the prosecution case gave evidence supporting receipt of Ext.P1 report under Section 42 of the NDPS Act, which was forwarded by PW1. Ext.P9 scene plan, showing the place of recovery, has been tendered in evidence through PW5 the then Village Assistant who prepared the same. PW6 and



PW7 are the Investigating Officers, who investigated the crime. Ext.P10 is the scene mahazar. Exts.P11 and P12 are the chemical analysis reports which would show that the recovered contraband was brown sugar. Exts.P13 and P14 are the forwarding notes whereby the contraband samples were sent for chemical analysis which resulted in Exts.P11 and P12 chemical analysis reports.

13. In the instant case the Special Court found that the accused had committed the offence punishable under Section 21(b) of the NDPS Act. On analysis of the evidence and a perusal of Section 21(b) of the NDPS Act, it is discernible that, whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable, where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees. Thus the possession of brown sugar, a contraband substance



prohibited under the NDPS Act, in contravention of any provision of the NDPS Act or any rule or order made or conditions of licence granted thereunder, is an offence under Section 21 of the NDPS Act. When the quantity of the contraband is lesser than the commercial quantity but greater than the small quantity, the offence would squarely fall within the ambit of Section 21(b) of the NDPS Act, which prescribes punishment with rigorous imprisonment for a term that may extend to ten years and with a fine that may extend to Rs. 1,00,000/-. Here the evidence of PW1 and PW2, duly supported by the other evidence on record, discussed as aforesaid, would clearly show that the learned Special Judge is right in holding that the accused committed the offence punishable under Section 21(b) of the NDPS Act and therefore the conviction is liable to be sustained.

14. Coming to the question of sentence, the learned counsel for the appellant/accused sought leniency. The learned Special Judge sentenced the appellant/accused to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 10,000/- for the offence punishable under Section 21(b) of the NDPS Act. Having regard to the



facts and circumstances of the case, I am inclined to modify the sentence

15. In the result:

(i) This appeal is allowed in part.

(ii) The conviction imposed by the Special Judge for the offence punishable under Section 21(b) of the NDPS Act is confirmed.

(iii) The sentence is modified as under:

The appellant/accused shall undergo rigorous imprisonment for a period of two years for the offence punishable under Section 21(b) of the NDPS Act and to pay fine of Rs.10,000/- (Rupees Ten thousand only). In default of payment of fine, the accused shall undergo rigorous imprisonment for a period of two months.

16. The accused is entitled to set off for the period she has been in custody.

17. As a sequel thereof, the order suspending sentence and granting bail to the accused stands cancelled and the bail bond also stands cancelled.

18. The appellant/accused is directed to surrender before the Special Court to undergo the modified sentence forthwith, failing which



the Special Court shall execute the sentence forthwith.

Registry is directed to forward a copy of this judgment to the Special Court for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/