

CASE NO.:  
Appeal (crl.) 222 of 1997

PETITIONER:  
State of Himachal Pradesh

RESPONDENT:  
Pawan Kumar

DATE OF JUDGMENT: 27/09/2004

BENCH:  
ARIJIT PASAYAT

JUDGMENT:  
J U D G M E N T

ARIJIT PASAYAT, J.

I am in respectful agreement with the view expressed by my learned and respected Brother that the opinion of Chemical Examiner, Kandaghat Laboratory was not to be excluded. However, I am unable to agree with the views as regards Section 50 of the NDPS Act.

Baldev Singh's case (supra) made the position clear that the said provision has application in case of search of a person. The crucial question would be whether search of a bag carried on the shoulder or back of a person is covered by Section 50. I am of the view that it would not be so. There can be no basis for making a distinction between search of a bag found near a person and a bag carried by him. In *Kanhaiya Lal v. State of M.P.* (2000 (10) SCC 380) it was held that when a bag carried by the accused is searched, Section 50 has no application. In *Gurbax Singh v. State of Haryana* (2001 (3) SCC 28) it was held that when a bag was being carried on the accused's shoulder, Section 50 has no application.

In *Saikou Jabbi v. State of Maharashtra* (2003 (9) JT 609) it was held as follows:

"A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See *Kalema Tumba v. State of Maharashtra and Anr.* (JT 1999 (8) SC 293), *The State of Punjab v. Baldev Singh* (JT 1999 (4) SC 595), *Gurbax Singh v. State of Haryana* (2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's case* (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance. In the case at hand the contraband articles were suspected to be hidden in the blue suitcase of the accused, and was not in his physical possession. The suitcase was put on the screening machine. This cannot be equated to be a recovery made from the

person of the accused by a personal search. In *Birakishore Kar v. State of Orissa* (2001 (9) SCC 541) it was held that when there was a recovery from a plastic bag belonging to the accused on which he was found sitting on railway compartment, Section 50 was not applicable. Baldev's case (*supra*) was referred to hold that Section 50 in case of search comes into play only in case of search by a person as distinguished from search from any premises etc. The position was also highlighted recently in *Madan Lal & Anr. v. State of Himachal Pradesh* (2003 AIR SCW 3969). Above being the position the High Court was justified in holding that Section 50 had no application."

Therefore, in my view there was no infraction of the requirements of Section 50 of NDPS. The High Court went wrong in holding otherwise.

In a case of this nature, having regard to the purport and object of the Act, the language cannot be any strained meaning so as to frustrate the legislative purpose.