

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. Appeal (S.J.) No. 284 2009**

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*[Against the judgment and order of conviction and sentence dated 13.02.2009 passed by learned Sessions Judge-cum-Special Judge of NDPS Act, Chatra in N.D.P.S. Case No.14 of 2007 arising out of Itkhori P.S. Case No.55 of 2007 corresponding to G.R. No.291 of 2007]*

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Laxmi Prasad, son of Dwarika Ram, residents of village-Dwari, Police Station-Itkhori, District-Chatra .....Appellant

**Versus**

The State of Jharkhand .... Respondent

With

**Cr. Appeal (S.J.) No. 328 of 2009**

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Parmeshwar Soni, Son of Late Munsii Soni, Resident of –Village-Duwari, P.O. and P.S.-Itkhori, District-Chatra ... .. Appellant

**Versus**

The State of Jharkhand .... Respondent

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For the Appellant : Mr. A.K. Chaturvedi, Advocate  
Mr. Chandan Kumar, Advocate  
For the Resp.-State : Mr. Pankaj Kumar, P.P.  
Mrs. Malsi Pathak to AC to P.P.  
**[In Cr. Appeal (SJ) No.284/2009]**  
For the Appellant : Mr. A. Allam, Sr. Advocate  
Ms. Asfia Sultana, Advocate  
Mr. Faisal Allam, advocate  
For the Resp. State : Mrs. Lily Sahay, A.P.P.  
**[In Cr. Appeal (SJ) No.328/2009]**

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**PRESENT**

**CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**  
**JUDGMENT**

**CAV On 14.05. 2026**

**Pronounced On 17/06/2026**

1. Heard Mr. A.K. Chaturvedyi learned counsel and Mr. A. Allam, learned senior counsel for the respective parties and learned P.P. and A.P.P.

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2. Both the above appeals arising out of common judgment are heard together and are being disposed of by common judgment.
3. Instant criminal appeal is directed against the judgment and order of conviction and sentence dated 13.02.2009 passed by learned Sessions Judge-cum-Special Judge of NDPS Act, Chatra in N.D.P.S. Case No.14 of 2007 arising out of Ithkhor P.S. Case No.55 of 2007 corresponding to G.R. No.291 of 2007, whereby and whereunder the appellants have been held guilty for the offences under section 18(C) of N.D.P.S. Act and sentenced to undergo R.I. for 7 years along with fine of Rs.25,000/- with default stipulation.

**Factual Matrix:-**

4. Factual matrix giving rise to these appeals is on the basis of confidential information received by S.I. Tarun Kumar, the then Officer-in-Charge of Ithkhor P.S. that two persons riding on a motorcycle are carrying opium. He informed through wireless message and also on mobile phone to Superintendent of Police and thereafter he along with police personnels under leadership of Dy.S.P. proceeded to Ichak Parnadih Road and started checking the vehicles. It is further alleged that at about 3:30 pm, two persons were seen riding on a black color splendor motorcycle coming from Pindarkon village, but seeing the police personnels, both miscreants started fleeing away accelerating the motorcycle, who were chased and apprehended by police force and disclosed their name as Parmeshwar Soni and Laxmi Prasad. It is further

alleged that in presence of two independent witnesses, namely, Ajay Paswan and Vijay Singh, a personal search of both the apprehended persons were conducted. It is further alleged that from the possession of Parmeshwar Soni, one green color plastic containing 1 kg opium like substance and from his pocket, one mobile phone of Usha Lexux company was found and on search of Laxmi Prasad, a green color plastic bag containing 1 kg liquid opium was recovered. Both the accused persons failed to produce any document with regard to seized opium. Thereafter, the alleged Hero Honda splendor Motorcycle having broken number plate was searched and from its dicky, blue color bag containing 15 pair silver payal, 22 pcs silver chain, 4 pcs silver pahuchi, 6 pcs silver bhanguri, 3 pcs silver tabiz, 37 pcs silver bichiya, 17 pcs silver ear rings and other silver ornaments as well as 15 pcs golden nose pins were recovered. A joint seizure list of aforesaid materials was prepared in presence of above two independent witnesses and a copy of seizure list was given to both of the accused persons.

5. On the basis of above written report (Ext.2) of S.I. Tarun Kumar, Itkhori P.S. Case No.55 of 2007 was registered for the offence under section 8(c)/18 of NDPS Act against both the accused persons. After completion of investigation, charge-sheet was submitted against them for the aforesaid offences. The appellants have denied from the charges and claimed to be tried.

6. In course of trial, altogether 9 witnesses were examined by the prosecution, namely:-

**P.W.1**-Chowkidar, Ajay Paswan (seizure witness)

**P.W.2**-Driver Vijay Singh (seizure witness)

**P.W.3**-Constable Yogendra Prasad

**P.W.4**-Constable, Krishan Kant Mehta

**P.W.5**-Hav. Lalbahadur Paswan

**P.W.6**-Lalji Yadav

**P.W.7**-Hav. Md. Jubair

**P.W.8**-S.I., Niranjan Uraon (Investigating Officer)

**P.W.9**-Sri Tarun Kumar (Informant and the then O/C, Itkhori)

7. Apart from oral testimony of the witnesses, following documentary evidences have been adduced by the prosecution.

**Ext.1 and Ext.1/1**.-Signature of seizure list witnesses, P.W.1, Ajay Paswan and P.W.2, Vijay Singh on seizure lists;

**Ext.1/2**-Entire seizure list;

**Ext.2**- Self-statement of the informant;

**Ext.2/2**-Entire writing of the seizure list proved by S.I. of Police, Niranjan Uraon;

**Ext.3**-Entire Formal FIR;

**Ext.4**-Entire FSL Report.

**Material Ext. I**- Remaining sample return by F.S.L;

**Material Ext.I & II**- Two opium polythene Bags of 1 kg each;

**Material Ext.III**-One Mobile Phone;

**Material Ext.IV**-Silver Jewelry in one Bag.

8. On the other hand, no oral or documentary evidence has been adduced by the defence. The case of defence is denial from the occurrence and false implication only on the basis of suspicion.
9. Learned trial court after evaluating the evidence available on record held the appellants guilty for the aforesaid offence and sentenced them as stated above, which has been assailed in these appeals.

**Submission on behalf of appellants:-**

10. Learned counsel for the appellants has vehemently argued that learned trial court has miserably failed to appreciate that in the instant case as per seizure list, 1 kg liquid opium was recovered from each of the appellants on personal search. Admittedly, the search was not conducted as per provision of section 50 of NDPS Act, which is mandatory in nature. Learned trial court has opined that irregularity in search and seizure in violation of section 50 of NDPS Act is not fatal to the prosecution. It is further submitted that the Investigating Officer alone has supported the prosecution story but admittedly the seized materials were not sealed on the spot and sampling was also not made in accordance with prescribed rules. It is further submitted that open polythene bags were produced as material exhibit before the court. It is further submitted that neither the seizure witnesses nor any other member of raiding party, who have been examined in this case, have been able to corroborate the factum of any search and seizure of opium from conscious possession of the appellants. Learned trial court has

mis-constitute the mandatory provision of law and ignored the vital evidence of ocular witnesses, who were member of raiding party, but specifically stated that nothing was recovered from the possession of the appellants. It is further submitted that stringent punishment has been prescribed for the offences under NDPS Act, therefore, provisions of law must be strictly followed. Hence, the appellants deserve acquittal from the charges levelled against them, setting aside the impugned judgment and order of conviction and sentence of the appellants passed by learned trial court, allowing these appeals.

**Submission on behalf of State:-**

11.Learned counsel for the State has opposed the aforesaid contentions raised on behalf of the appellants and has submitted that learned trial court has very wisely and aptly considered the oral as well as documentary evidence available on record and arrived at right conclusion. Therefore, there is no illegality or infirmity in the impugned judgment and order of conviction and sentence of the appellants calling for any interference in these appeals, which is devoid of merits and fit to be dismissed.

**Analysis, Reasons and Decision:-**

12.I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

13.The only point for determination in this appeal is that “**as to whether the impugned judgment and order of conviction and sentence of the appellants passed by learned trial court suffers from any error of law calling for any interference in this appeal?**”

14.Before adjudicating the above point, it is necessary to take brief resume of oral as well as documentary evidence adduced by the prosecution to substantiate the charges leveled against the appellants.

**P.W.1- Chowkidar, Ajay Paswan and P.W.2 Driver Vijay Singh** are the seizure list witnesses and have simply admitted their signature on the seizure list but completely denied any search and seizure in their presence.

**P.W.3-Const. Yogendra Prasad** was a member of police party and he has simply stated that two persons riding on a motorcycle were arrested by the then Officer-in-Charge, Tarun Kumar but nothing was recovered from their possession. This witness has been declared hostile by the prosecution.

**P.W.4- Const. Krishna Kant Mehta, P.W.5-Havaldar, Lalbahadur Paswanj, P.W.6-Lalji Yadavj and P.W.7- Hawaldar, Zubaid** have also supported the story of apprehension of the appellants while they were proceeding on a motorcycle but completely failed to prove any recovery from the possession of the accused persons. These witnesses have not been declared hostile by the prosecution. Moreover, they have also failed to identify the accused persons behind the bar.

**P.W.9-S.I. Tarun Kumar** is the informant of this case.

According to his evidence, on 23.04.2007 at about 11 hours, he received confidential information that some criminals have robbed the motorcycle near Baye More and thereafter, he along with other police personnels proceeded to the said place of occurrence but the miscreants managed to flee away. He has further deposed that in the meantime, he received confidential information that two persons riding on a motorcycle are carrying opium with them. Then, he informed the senior police personnels and proceeded on Ichak-Pindarkon road and started checking the vehicles. At about 3:30 pm, a black color splendor motorcycle was coming from the direction of Pindarkon village and seeing the police personnels, they started fleeing away accelerating the speed but they were chased and apprehended by police party. He has further deposed that on search and seizure in presence of two independent witnesses, 1 kg liquid opium was recovered from each of the accused persons carrying in their hands in a polythene bag and from the dicky of motorcycle, silver and gold ornaments were also recovered and accordingly, seizure list was prepared. He has proved the material Exts. (I),(II),(III) and (IV).

**P.W.8-S.I. Niranjan Oraon** is the Investigating Officer of this case. He has proved written report (Ext.2), Formal FIR (Ext.3), FSL Report of the seized opium (Ext.4). He has further proved that the sample was collected from the seized materials and was sent to FSL for

chemical examination and the report was received. After finding sufficient evidence against the accused persons, he submitted charge-sheet.

15. From the aforesaid discussion of prosecution evidence, it appears that Dy.S.P., who was accompanied at the time of search and seizure, has not been made charge-sheet witness and has not been examined in this case. It also appears that the seized opium has not been weighed rather during evidence, it is stated by the informant (P.W.9) that 1/2 kg liquid opium from each of the accused persons was seized as against the quantity mentioned in the seizure list (Ext. 1/2). The most glaring aspects of this case are that except the informant, none of the prosecution witnesses have proved any recovery of illicit liquid opium from the possession of the present appellants.

16. As regards, personal search under NDPS Act, the rule is laid down under section 50 of 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 Gazetted 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 sub-section (1).*

*(3) The Gazetted 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 Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.*

*(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.*

17. In the case of *Arif Khan @ Agha Khan Vs. State of Uttarakhand (AIR) 2018 SC 2123* in *Cr. Appeal 273/2007* dated 27<sup>th</sup> April, 2018, the Hon'ble Supreme Court has held as under:

*“What is the true scope and object of Section 50 of the NDPS Act, what are the duties, obligation and the powers conferred on the authorities under Section 50 and whether the compliance of requirements of Section 50 are mandatory or directory, remains no more res integra and are now settled by the two decisions of the Constitution Bench of this Court in *State of Punjab vs. Baldev Singh (1999) 6 SCC 172* and *Vijaysinh Chandubha Jadeja vs State of Gujarat (2011) 1 SCC 609*.*

The Hon'ble Supreme Court has held in *Vijaysinh Chandubha Jadeja vs State of Gujarat (2011) 1 SCC 609* that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not

choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate.”

18. In the instant case, the personal search of accused persons has been conducted by P.W.9, who happens to be Officer-in-Charge-cum-informant of this case. Admittedly, he has not communicated the accused persons of their right to be searched in presence of Gazetted Officer as mandated under section 50 of NDPS Act. It appears from the aforesaid oral testimony of prosecution witnesses, particularly the informant (P.W.9) that both the accused persons were not informed about their right to be searched before the Magistrate and a composite seizure list memo has been prepared in this case. The search and seizure has also not been corroborated by any other witnesses examined by the prosecution including the members of the raiding party. The quantity of opium allegedly recovered from the possession of the appellants is also doubtful and was never weighed and sealed on the spot.

19. In view of above discussion and reasons, the conviction and sentence of the appellants is absolutely illegal and is violation of mandate of law. Therefore, the judgment and order of conviction and sentence dated 13.02.2009 passed by learned Sessions Judge-cum-Special Judge of NDPS Act, Chatra in N.D.P.S. Case No.14 of 2007 arising out of Itkhori P.S. Case No.55 of 2007 corresponding to G.R. No.291 of 2007 is,

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hereby, set aside and the appellants are acquitted from the charges leveled against them. These appeals are **allowed**.

20.The appellants are on bail. They are discharged from liability of their bail bonds and sureties are also discharged.

21.Pending I.A(s), if any, is also disposed of accordingly.

22.Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

**(Pradeep Kumar Srivastava, J.)**

*High Court of Jharkhand, Ranchi*

*Date 17/06 /2026*

*Pappu/-*

*N.A.F.R.*

*Uploaded on 19 /06 /2026*