IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 970 OF 2011

NAVDEEP SINGH **APPELLANT**

VERSUS

STATE OF HARYANA **RESPONDENT**

O R D E R

1. **This appeal is directed against the judgment and order passed by the High Court of Judicature of Punjab and Haryana at Chandigarh in Criminal Appeal No. 1041-SB/2001, dated 10.12.2008. By the impugned judgment and order, the High Court has dismissed the appeal of the appellant and confirmed the judgment of conviction and the order of sentence passed by the Trial Court, dated 18.08.2001 and 21.08.2001, respectively.**

2. **The appellant before us, in this appeal, has been convicted for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act" for short) and sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs. 1 lac, in default of payment of which he has to undergo rigorous imprisonment for a further period of one year.**

3. **Briefly stated, the incident occurred on 11.08.1999, when the Assistant Sub-Inspector Karan Singh (PW-8), upon receipt of information regarding transaction involving narcotic drugs, after recording a diary entry and intimating the superior officers of such, held a picket alongwith other police officers and Balwan Singh (PW-4). The appellant, who was riding a scooter, was stopped on suspicion. He was given an option to be searched in the presence of a Gazetted Officer or a Magistrate. The appellant chose the former and accordingly, the search was conducted in presence of the Deputy Superintendent of Police ("the DSP" for short), whereupon one kilogram of Charas was recovered from the scooter. The sample and the rest of recovered Charas were duly sealed in parcels and taken in possession vide separate recovery memos. *Ruqa* was sent to the Police Station, on the basis whereof an FIR was registered. Thereafter, the appellant was arrested and the statements of witnesses were recorded. On completion of the investigation, the appellant was challaned and charges were framed against him.**

4. **The Trial Court and the High Court have convicted and sentenced the appellant for being in conscious possession of one kg of Charas without any permit or**

licence. It is the correctness or otherwise of the conviction and sentence is the subject matter of this appeal.

5. We have heard learned counsel for the parties to the *lis*.

6. At the outset, learned counsel appearing for the appellant would submit that, since the appellant was carrying the contraband substance in quantities lesser than the commercial quantity, the sentence awarded by the Trial Court and confirmed by the High Court should be modified to the sentence already undergone by the appellant. In support of his submission, he would bring to our notice Section 20 of the Act, as amended by Act 9 of 2001, and would stress upon the fact that the quantity recovered is lesser than the commercial quantity, maximum punishment for which extends upto ten years of rigorous imprisonment.

7. *Per contra*, learned counsel appearing for the respondent-State brings to our notice that the conviction and sentence passed by the Trial Court was prior to 02.10.2001 and, therefore, the amended provision would not be applicable to the instant case.

8. We have given our anxious consideration to the abovementioned issue raised by the learned counsel for the appellant. In our opinion, since the amended provision has come into effect from 02.10.2001, the submission of the learned counsel has no merit whatsoever and, therefore, the benefit of the amended provision cannot be extended to the appellant.

9. The learned counsel would also contend that there is a breach of the mandatory provisions of Section 50 of the Act. In furtherance of the said contention, the learned counsel would take us through the evidence of the DSP (PW-3) and the Investigating Officer (PW-8) in as much as to bring out that the appellant was not apprised of his statutory right by PW-8 and thus, the mandatory requirement was not satisfied. The learned counsel in order to substantiate his contention, relied upon the decision of this Court in *Myla Venkateswarlu v. State of Andhra Pradesh*, 2012 (5) SCC 226 and further referred to the observations made by the Constitution Bench in the case of *Vijaysingh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609.

10. We have carefully perused the provisions of the Section 50 of the Act. In our opinion, it may not be necessary to extract the whole provision. The Trial

Court and the High Court have noticed the aforesaid submission made before us, at length. On marshalling of facts and appreciation of evidence, they have reached the conclusion that what was searched is the scooter and not the person of the appellant and, therefore, the provisions of Section 50 of the Act would not apply to the present case. We have also looked into the notice issued to the appellant by PW-3, the Investigating Officer, before the search was made and we note that a substantial question was put across the appellant as to whether he chooses to be searched by a Gazetted Officer or a Magistrate. The appellant accorded his consent to be searched by a Gazetted Officer. In fact, the appellant and the scooter were searched by a Gazetted Officer as per his request.

11. In our opinion, the provisions do not prescribed any set format for such notice. The essence is to appraise the accused of his legal right of being searched either by a Gazetted Officer or a Magistrate. Here, when the appellant was apprised of his statutory rights under Section 50 by PW-3 and opts to be searched by a Gazetted Officer, then he has, by necessary implication, consciously exercised his right. In that view of the matter, we cannot accept the submission of the learned counsel for the

appellant that the mandatory provisions of Section 50 of the Act were breached.

12. The learned counsel would contend that we should extend our sympathies to the plight of the appellant since the appellant is a young person and an engineer by profession.

13. As per the amended provision of Section 20 of the Act, the minimum sentence that can be awarded, if there exists an order of conviction under the Act, is ten years and the said term was rightly awarded by the Trial Court and confirmed by the High Court. We cannot modify the sentence, since the provisions do not permit this Court to award a punishment less than what is prescribed under the Act. In that view of the matter, the aforementioned contention of the learned counsel cannot be accepted by us.

14. In the result, while upholding the decision rendered by the Trial Court and confirmed by the High Court, we dismiss the appeal.

Ordered Accordingly.

.....J.
(H.L. DATTU)

.....J.
(RANJAN GOGOI)

NEW DELHI;
JANUARY 09, 2013.