

**(1998) 11 MP CK 0001**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Criminal Appeal No. 356 of 1995

Afjal Abbas

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Nov. 12, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 42, 50, 58

**Hon'ble Judges:** R.D. Vyas, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

R.D. Vyas, J.

This appeal arises against the judgment and order in Sessions Trial No. 144 of 1993 dated 22.4.1995 by the learned Additional Sessions Judge, Jaora, who was pleased to convict the Appellant along with another accused Chunnukhan whose Appeal No. 591 of 1995 against the same judgment has already been allowed.

2. Sari Z.A. Khan argued that in the appeal arising against the same judgment, this Court has held from the same evidence that Section 42 of the N.D.P.S. Act (for short "the Act) he has not been followed, which is mandatory as held by the various Courts including the Supreme Court, therefore, this appeal also deserves to be allowed. He argued that Section 50 of the Act has also not been followed as required by law. He argued that a false case has been made out against the Appellant and Chunnukhan who was having imbalanced mind and was going Hussain Tekri for ZIRAT and when the Appellant saw that Chunnukhan is unnecessarily being harassed he challenged "the police officer from doing that, upon which the police officer got enraged and took him along with Chunnukhan in the police van to the police station and booked a false case. He said that false Panchnama was prepared and though the Panchnama did not support the lower Court convicted the Appellant

only on the evidence of P.W. 2, R.B. Dixit, the Investigating Officer, who apart from implicating falsely the Appellant, gave a false evidence so as to secure conviction of the Appellant.

3. The counsel for the Appellant also argued that there are many missing links when the Punch did not support the Panchnamas the evidence of Panchnamas became doubtful and it was the duty of the prosecution to prove the case beyond reasonable doubt link by link. He argued that the police have not prepared the usual Panchnama or search of the Appellant. He argued that as required by Section 50 of the Act the Appellant was not given to know the legal provisions as to requiring the police officer to give option to the accused of N.D.P.S. case whether he would like to be searched in presence of a Gazetted Officer or Magistrate as referred to in Section 50 of the Act. The evidence tried to be created by the Investigating Officer also lacked in sequence. He argued that it is not proved at all that the Appellant had any contraband article. The Investigating Officer had tried to improve upon the story by bringing weighing scale from a Goldsmith, which never was in the Panchnama drawn by that Officer. The Officers tried to prove by saying that one Ramesh was sent for bringing the weighing scale from the Goldsmith. Ramesh has not been examined nor is any Goldsmith examined to prove that aspect. He argued that even the name of the Goldsmith is not known to the Investigating Officer. I agree with the learned Counsel for the Appellant.

4. Earlier when the matter was called out and argued I felt that the Investigating Officer R.B. Dixit had created a false case against the accused and the story put-forth in statement u/s 313 of the Code of Criminal Procedure by the accused required to be borne in mind. It was propounded that the other accused was lunatic, in spite of that neither the Court nor the Investigating Officer thought it fit to get that accused medically examined and the said accused Chunnukhan was brought in the Court where also I felt that "the said person was not looking like a person with sound and healthy mind. I directed issuance of notice against R.B. Dixit for creating a false case giving false evidence. Shri R.B. Dixit was called in person and he had remained present in person and filed an affidavit. In his affidavit, he has reiterated the story. The said affidavit does not mention that the Appellant was asked for option as required by Section 50 of the Act. Section 42 has not been followed as is already been held by this Court in Appeal No. 591 of 1995 arising out of the same judgment, which having not been challenged so far after the judgment dated 3.10.1997, there is no reason to take a different view in this matter. Even personally R.B. Dixit could not convince me about the bona fide exercise of his powers of prosecuting the Appellant along with Chunnukhan.

5. In reply the said R.B. Dixit has engaged Shri B.A. Nigam who argued that the matter must be referred to the State Government as the action of the said R.B. Dixit (P.W. 2) was in bona fide exercise of his power and carrying out his duties and that the Sessions Court has already convicted the Appellant there is no reason to

prosecute the said R.B. Dixit on merits. I hold that Sections 42 and 50 of the Act have not been followed therefore the Appellant is entitled to acquittal. I am also convinced that the Investigating Officer R.B. Dixit has falsely framed up the Appellant and feel that he deserves to be tried u/s 58 of the Act.

6. Accordingly, I allow the appeal, set aside the impugned judgment and conviction and sentence. I direct that actions be taken against Mr. R.B. Dixit to prosecute him u/s 58 of the Act as also under appropriate law for wrongly and dishonestly implicating an innocent person under the N.D.P.S. Act and giving false evidence before the Court creating false document in the nature of Panchnamas and seizure memos after following the due procedure as required by law.