

**Ram Autar Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/474857](http://sooperkanoon.com/474857)

**Court :** Allahabad

**Decided On :** Feb-06-1973

**Reported in :** 1973CriLJ1096

**Judge :** D.S. Mathur, J.

**Appellant :** Ram Autar

**Respondent :** State of U.P.

**Judgement :**

ORDER

**D.S. Mathur, J.**

1. This is a revision by Ram Autar against the order of the Additional Sessions Judge, Aligarh, dismissing his appeal and thereby maintaining his conviction under Section 60 of the Excise Act for being in possession of 2 Seers of illicit Charas (Sulpha). The recovery was made by S. I. Banwari Lai Gautam from the possession of the applicant when he raided the house of Chiranji, Excise Contractor, in Mohalla Sarai Hakim. The recovered article was examined by the Excise Inspector, who on the basis of the physical appearance, smell and flame test was of opinion that it was Charas, the possession of which without licence was prohibited under the Excise Act,

2. The main point for consideration is whether reliance can be placed upon the opinion of the Excise Inspector and also whether he can be regarded as an expert. This question was considered in detail in *Ram Jus v. State*, 1970 All LJ 1343. That was a case of Ganja which is not distinct from Charas. The Bench had examined two Professors of the University and on the basis of their testimony expressed the opinion that it was necessary for the prosecution to lead evidence based on chemical analysis in order to establish that the article alleged to have been recovered from the accused was really Ganja. From the report it did not appear if the State was given an opportunity to lead expert evidence by examining the Chemical Examiner. On the last date of hearing the Government Advocate was directed to secure the appearance of the Chemical Examiner in case in his opinion there was no chemical and microscopic test for the detection of Charas. Dr. Swarup Narain Tewari, Chemical Examiner and Serologist to Governments of U. P. and M. P., appeared before the Court and stated that the presence of Ganja, Charas and Bhang can be detected by chemical test, microscopic examination and also by physical test. The chemical test and also microscopic Examination of the article are much surer test than the physical test. In a physical test the possibility of making a bona fide mistake cannot be excluded. The Courts of law can rely upon the physical test provided that there is no chemical test of the detection of the substance, nor can it be detected by microscopic examination.

3. From the deposition of Dr. Tewari it also appears that samples of Bhang, Ganja and Charas are sent to him for examination. During the last year he examined about 4,500 samples suspected to contain such intoxicant. There is no explanation on record why the Excise Inspector did not send a sample of the recovered article or the recovered article itself to the Chemical Examiner for analysis and report. In these circumstances, the opinion of the Excise Inspector cannot be made the basis of conviction. He should have sent a sample to the Chemical Examiner for analysis and report before prosecuting the applicant.

4. The recovered article is reported to have been destroyed and, therefore, retrial is out of question.

5. The revision is hereby allowed and Ram Autar is acquitted of the charge under Section 60 of the Excise Act, His conviction and sentence are set aside. He is on bail and his bonds are discharged.

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