

**Jagdish Vs. State**

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**Court :** Delhi

**Decided On :** Sep-25-2000

**Reported in :** 2000VIIAD(Delhi)1163; 2001CriLJ297; 88(2000)DLT131; 2000(57)DRJ372; 2001(1)JCC267

**Judge :** R.S. Sodhi, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 15, 50, 61 and 85

**Appeal No. :** Criminal Appeal No. 31 of 1996

**Appellant :** Jagdish

**Respondent :** State

**Advocate for Def. :** Ms. Santosh Kohli, Adv.

**Advocate for Pet/Ap. :** Mr. Roopesh Sharma,;amices Curia

**Judgement :**

ORDER

**R.S. Sodhi, J.**

1. This criminal appeal is directed against the judgment dated 24.8.1995 of the Additional Sessions Judge, Special Court, NDPS Act, Delhi, whereby the learned

Additional Sessions Judge found the appellant guilty of offence punishable under Sections 15/61/85 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act') and convicted him accordingly and, thereafter, by his order 25.8.1995 sentenced the accused to undergo rigorous imprisonment for ten years and a fine of Rs. one lakh and in default of payment of fine to undergo further rigorous imprisonment for one year.

2. The case of the prosecution is that on 2.12.1993 SI Roshan Lal received a secret information that one young boy will come from Bareilly Express Train in general coach who will be having a black colour bag containing poppy powder and who will get down at Shahdara Railway Station. This information was entered in D.D. register and the SHO informed the ACP (Railways) about the same on telephone. Thereafter, the SHO along with ASI Jagdish Parsad, Const. Brij Bhushan, Const. Jagbir Singh and Head Constable Santokh Singh went to Shahdara Railway Station and some passengers were told about the information and one Parmod Kumar was joined in the raiding party.

3. At about 9.15 p.m. nakabandi was held at platform No. 3. The raiding party split itself in parts. At about 9.30 p.m. Bareilly Express stopped at platform No. 3 and one young boy having a black colour bag hanging on his left shoulder came near the stairs and he was stopped. The passenger revealed his name as 'Jagdish'. He was told about the secret information and a notice in writing was given to the effect that if he wanted, he could be produced before a Gazetted Officer/Metropolitan Magistrate for search of his bag. In the meantime, the ACP arrived at the spot. On checking the bag it was found that it contained six polythene bags which contained poppy powder. Head Constable Santokh Singh was sent to bring scale and weights. The poppy power on being weighed was found to be 15 kg. of which 500 mg. was taken as sample and the remaining poppy powder was made in two different pulandas and sealed with the seal of 'RLS' and the SHO also put his seal of 'SN'. The CFSL form was filled in and also sealed with the same impression of seals. The recovered poppy powder along with the CFSL form was taken possession of as case property and deposited with the Malkhana Moharar. A challan under Section 15/61/85 of the Act was made out against the accused.

4. The prosecution, in order to establish its case, examined 9 witnesses. The main witness, PW-4, ASI Jagdish Parsad, when examined stated that no notice under Section 50 of the Act was given to the accused. He was declared hostile and crossexamined. He admitted that recovery memo, Ex. PW- 4/C, had been prepared at the spot, but this, in any case, is not a notice under Section 50 of the Act. I have heard learned counsel for the State who is also of the same opinion that no separate notice under Section 50 of the Act is on the record. This mandatory requirement of law having been not complied with in this case, no conviction can be maintained. Without going into further aspect of this matter, since mandatory notice under Section 50 of the Act has not been served on the accused, therefore, I set aside the conviction and sentence of the appellant, allow the appeal and quash the order dated 24.8.2000. The appellant, if not wanted in any other case, be set at liberty forthwith.

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