

**Radhey Shayam Vs. the State**

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**Court :** Delhi

**Decided On :** Jan-06-1972

**Reported in :** 8(1972)DLT260

**Judge :** V.D. Misra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154

**Appeal No. :** Criminal Revision Appeal No. 458 of 1971

**Appellant :** Radhey Shayam

**Respondent :** The State

**Advocate for Pet/Ap. :** R.P. Kathuria and; D.R. Sethi, Advs

**Judgement :**

**V.D. Misra, J.**

(1) This revision is directed against the charge made against the petitioner under Section 39 of the Arms Act, 1959 (No. 54 of 1959).

(2) Pishori Lal Bhatia, Inspector Customs (Preventive) Central Revenue Building, raided the house of the petitioner and recovered smuggled goods. He also noticed a revolver and three live cartridges during the course of his search. He informed the police, and sub inspector Kasturi Lal, who was on the beat, searched the

petitioner's house and took: possession of the same. Sanction for prosecution was granted by Shri A A. Khawja, Additional District Magistrate (North), Delhi. After completing the investigations, Chalan was put in Court and the petitioner was charged.

(3) Mr. R P. Kathuria, learned counsel for the petitioner, contends that Shri A.A. Khawja had no power to grant the sanction in question.

(4) Mr. D.R. Sethi, learned counsel for the State, has produced before me notification No F 2(45)/65 Home (2). dated December 27, 1965, issued under Section 10 of the Code of Criminal Procedure, appointing Shri A.A. Khawja, Additional District Magistrate, and conferring upon him the powers of a District Magistrate under the Code or under any other law for the time being in force.

(5) Mr. Kathuria, however, submits that the sanction should have been granted by the District Magistrate himself and could not be granted by an Additional Magistrate. Merdies on .Ajaib Singh v. Gurbachan Singh, Hari Chand Aggarwal v. The Batala Engineering Co. Ltd., and Jawahar v. State

(6) In Ajjib Singh's case (supra), the Supreme Court was concerned with the provisions of the defense of India Act, 1962, and its Rules. It was found that the authority empowered to act under those Rules 'shall not be lower in rank than that of a District Magistrate. The Additional District Magistrate is admittedly lower in rank to that of District Magistrate In view of the provisions of Section 10(3) of the Code of Criminal Procedure. In these circumstances it was held that the Additional District Magistrate had no power to act under that Act in spite of his having been delegated the powers of the District Magistrate under Section 10(2) of the Code of Criminal Procedure.

(7) In Hari Chand Aggarwal's case (supra), the Supreme Court was concerned with Section 29(1) of the defense of India Act in respect of the requisition of a property. Ajaib Singh's case was followed and the same conclusion was reached.

(8) In Jawahar's case (supra), admittedly the Additional District Magistrate had not been given the powers. The petitioner cannot, therefore, draw any support from

these decisions.

(9) There Lordships of the. Supreme Court in Central Talkies Ltd., v. Dwarka Prasad, considered the fact of permission granted by Additional District Magistrate when under Section 2 of the U.P (Temporary) Control of Rent and Eviction Act the District Magistrate had been empowered to grant permission. It was held that the Additional District Magistrate, who had been empowered under Section 10(2) of the Code of Criminal Procedure, must be regarded as possessing the powers of the District Magistrate not only under the Code but also under any other law for the time being in force which included the U.P. Act. A Bench decision of the Punjab High Court in State v. Bader Singh, while considering the sanction given by the Additional District Magistrate under Section 39 of the Arms Act and after considering Ajaib Singh as well as Central Talkies Ltd. cases held that 'for purpose of according sanction the provisions undoubtedly have the District Magistrate in view, but the State Government under Section 10, sub-section (2) of the Code of Criminal Procedure, is competent to appoint, firstly any Magistrate of the First Class to be an Additional District Magistrate, and secondly to invest that Additional District Magistrate with the powers of District Magistrate under the Code as well as for any other law in operation.' This decision was followed in two unreported decisions of this Court in Hira Lal v. State, (Criminal Revisions No. 131-D of 1965) decided on February 1, 1966, and Sohan Singh-v. State', (Criminal Revision No. 272 of 1967), decided on May 21, 1970. Similar view has been taken by Bench decisions of Assam and Bombay High Courts in The State v. Hussain Mirdha, and The State v. Bhimsha Chnaasapna Kore.

(10) Shri A.A. Khawja, who had been given powers of the District Magistrate under Section 10(2) of the Code of Criminal Procedure in respect of any other law for the time being in force, was, therefore, competent to grant the sanction in the instant case.

(11) The next contention of Mr. Kathuria is that the search of the petitioner's premises was illegal, inasmuch as the sub inspector did not follow the provisions of Section 165 of the Code of Criminal Procedure. His first grievance is that under Section 165 of the Code only an officer in charge of a police-station or a police-

officer making an investigation could conduct the search.. In the instant case, the sub inspector was not an officer in charge of a police-station nor was he making any investigation. His submission is that investigation starts, only after information has been reduced to writing in terms of Section 154 of the Code. His second grievance is that the Sub-inspector had not recorded his grounds of belief and had not specified the thing for which the search was to be made.

(12) In my opinion, there is no force in the contention of the learned counsel. It is not correct to say that the investigation would only start when the information relating to the commission of a cognizable offence has been reduced to writing under Section 154 of the Code of Criminal Procedure, and if such information has not been so reduced to writing the investigation conducted would be illegal and void. Section 154 is not a mandatory provision and is only directory. A Police Officer may come to know of the commission of a cognizable offence from various source, even on a rumour. It is desirable that he should record the information first before proceeding to investigate the matter in order to avoid any confusion later on. However, where a police-officer while on beat comes to know of the commission of the cognizable offence like the one in the instant case, he cannot afford to waste time in recording the information and thus giving a chance to the accused to do away with the incriminating article. A Customs Officer had come to know of the presence of a revolver and cartridges and had informed the sub inspector. He immediately conducted the search and recovered the articles. He asked the petitioner to produce license, if any, in respect of the same. On the failure of the petitioner to produce the license, he took them into possession and arrested the accused. In these circumstances, he cannot be said to be not an investigating officer. Information means collection of evidence (Section 4(1)(i) of the Code). The Collection of evidence starts the moment an officer takes steps for the same after having come to know of the commission of a cognizable offence. The Sub-inspector was thus an officer making an investigation. It is true that he did not record the grounds of belief and had not specified the thing sought to be recovered as required by sub-section (1) of Section 165 of the Code of Criminal Procedure, but this will not by itself vitiate the search or the investigation. Admittedly, immediately after the search the sub inspector recorded all the proceedings starting with the information received by him and the

sanction taken, and the same was sent to the police-station for the registration of a case.

(13) The Supreme Court in *H.N. Rishbud v. State of Delhi* observed thus:

'A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from investigation is provided in Section 190, Criminal Procedure Code, has the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance'

A Bench decision of this Court in *The Municipal Corporation of Delhi v. Chhwal Lal* has held that the provisions of Section 165 of the Code are directory and not mandatory. A substantial compliance is enough. In *Radha Kishan v State of Uttar Pradesh* it was observed thus:

'It may be that where provisions of Sections 103 and 165, Criminal Procedure Code are contravened the search can be resisted by the person whose premises are sought to be searched. It may also be that, because of the illegality of the search, the Court may be inclined to examine separately the evidence regarding the seizure. But beyond these two consequences no further consequence ensues.'

(14) The result of the above discussion is that even if there is an illegality in conducting the search, it does not vitiate the seizure of the articles. It will be for the Magistrate to decide whether the incriminating articles were in fact recovered from the possession of the petitioner on the evidence produced before him. However, the charge framed against the petitioner cannot be quashed on this ground.

(15) The revision, therefore, fails and is dismissed. The Magistrate shall not take into consideration the observations made by me while deciding the case on merits.