

**Akthar Hussaln Vs. State**

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**Court :** Delhi

**Decided On :** Jun-01-2001

**Reported in :** 2001VAD(Delhi)133; 2001CriLJ3442; 93(2001)DLT260; 2001(59)DRJ513

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

**Acts :** Narcotic Drugs and Psycotropic Substances Act, 1985 - Sections 15, 42 and 50

**Appeal No. :** Criminal Appeal No. 45/1994

**Appellant :** Akthar Hussain

**Respondent :** State

**Advocate for Def. :** Mr. U.L. Watwani, Adv.

**Advocate for Pet/Ap. :** Mr. R.P. Luthra, Adv

**Judgement :**

ORDER

R.S. Sodhi J.

1. This criminal appeal seeks to challenge the judgment and order of the Additional Sessions Judge, Delhi in Sessions Case No.304/91, whereby the learned Judge by his judgment and order dated 25.8.1993 has held the appellant

guilty under Section 15 of the NDPS Act. Further by his separate order he has sentenced the appellant to undergo an imprisonment of ten years with a fine of Rs.1,00,000/-(rupees one lakh).

2. The case when called out today, nobody appeared for the appellant in support of the appeal. Since this is a case of 1994 and has been shown on the list for a sufficient amount of time, it can brook no further delay. I, therefore, appoint Mr. R.P. Luthra as amicus Curiae, who is present on behalf of Delhi Legal Service Authority to assist the Court.

3. The brief facts of the case as noted by the Additional Sessions Judge are that:-

On 30.12.1990, S.I. Pran Nath of P.S. Pratap Nagar, who was on patrolling duty along with other police officials, received a secret information about this case, he organized a raiding party and apprehended the accused while he was found carrying a gunny-bag near after the accused was apprehended, he was informed that the police had an information that he is carrying POST and, in case, he desires, his search can be conducted before the gazetted officer or magistrate; the accused is stated to have agreed that he is carrying POST (Poppy-head-powder) without any permit license: on this a constable was sent to the police station to inform the SHO & ACP and the secret information was also sent; at about 3.25 p.m., SHO along with a constable reached the spot, verified the facts and at about 3.30 p.m., ACP Sh. R.S. Dahiya, is also alleged to have reached the spot; and under the supervision of ACP, the gunny-bag of the accused was checked; on checking, it was found to be containing poppy-head-powder out of which 1Kg. was drawn as sample; the remaining poppy-head-powder on weighing, POST (poppy-head-powder) was recovered from the accused; the sample and the remaining POST was sealed with the seal of RC and the SHO affixed his seal of GCS; form CFSL was also filled up; and the seal of RC after use was given to the public witness Ashok Kumar Gupta; SHO retained his seal with him; he also took charge of the case property; the accused was then arrested and after completing the remaining investigation & collecting the result of the sample, the challan was filled against the accused u/s 15 NDPS Act.'

4. Learned counsel for the appellant submits that this is a case where there is violation of Section 42, inasmuch as the secret information allegedly taken down in writing was not sent to his superior as required by law. Learned counsel draws my attention to the statement of SI Pran Nath, who in his deposition states that on 30.12.1990, he was posted at, Police Station Pratap Nagar. When he Along with SI Ram Chander and other constables was on patrol duty at old Rohtak Road, he received the secret information. He organized a raiding party consisting of the said police officials and public witness Ashok Gupta. At about 3.05 P.M. the accused present in Court was apprehended. The accused was informed about the secret information and also that he was required to be searched, which search could be conducted before a Gazetted Officer or a Magistrate, if the accused so desired. Notice under Section 50, Ex.PW5/A was also served. Constable Ajay was sent to the Police Station to inform the SHO and ACP about he case. Further, this witness in his cross-examination states that:-

'I had sent the information which was recorded into writing to the Police Station/S.H.O. after apprehending the accused.'

5. PW-7, Inspector Gyan Chand states that he was posted as S.H.O., Pratap Nagar when Constable Ajay Singh came and informed him that a secret information had been received and also gave a written information sent by SI Pran Nath, as Ex.PW6/B. On this ACP Dahgiya was informed on telephone and was requested to reach the spot. From the statement of these two witnesses, as also on a perusal of Ex.PW6/B, it is clear that the secret information received was reduced to writing and superior officials were informed of the same. There is, therefore, no violation of Section 42 of the Act.

6. The next argument of the learned counsel is that Section 50 has been violated. He draws my attention to the notice which according to him is not in accordance with law. From a perusal of the deposition of PW-6 as also PW-5/A it cannot be said that the accused was not informed of his right under Section 50 of the Act. The statement of PW-6 as also PW-5/A it cannot be said that the accused was not informed of his right under Section 50 of the Act. The statement of PW-6, to this effect, is corroborated by the statement of PW-5, Inspector Ram Chander, who

says that SI Pran Nath informed the accused of the secret information and also that he could have his search conducted before a Gazetted Officer or a Magistrate. A written notice to this effect was also given to him which is Ex.Pw-5/A. This leaves me with no doubt that Section 50 has been complied with. No other point was agitated by the learned counsel. From a perusal of the judgment under challenge, I find that the learned Judge has carefully analysed the material on record to arrive at his conclusion which cannot be faulted with. In this view of the matter, I have no hesitation in upholding the judgment of conviction dated 25.8.1993. On the question of sentence the minimum under the Act has been awarded. The same needs no interference.

Cr1.A.45/94 is, therefore, dismissed.

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