

**Rameshwar Vs. State**

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**Court :** Delhi

**Decided On :** May-08-2002

**Reported in :** 2002VAD(Delhi)699; 98(2002)DLT364; 2002(63)DRJ538; 2002(84)ECC193

**Judge :** K.S. Gupta, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21 and 50; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

**Appeal No. :** Crl. Appeal No. 331/2001

**Appellant :** Rameshwar

**Respondent :** State

**Advocate for Def. :** Anil Soni, Adv.

**Advocate for Pet/Ap. :** Sanjiv Kumar, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**K.S. Gupta, J.**

1. This appeal is directed against the judgment dated 13th March, 2001 and order dated 15th March 2001 of an Additional Sessions Judge convicting the appellant-

accused under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short the 'Act') and sentencing him to undergo RI for 10 years and pay a fine of Rs. 1 lac.

2. Case of the prosecution, in brief, is that on 16th August, 1999 around 2.15 PM ASI Chander Pal Singh, PW-9 Along with HCs Om Prakash, PW-7, Harpal Singh and Const. Rajvir Singh were present in connection with patrolling at E.E. Block Bus Stand, Outer Ring Road and there PW-9 received secret information that a person by the name of Rameshwar having heroin, would go to Maksudpur village via Maksudpur chowk. PW-9 organized a raiding party consisting of said police officials with him. PW-4 Sher Singh from public who agreed to join raid, was also included in raiding party. Nakabandi was made near Maksudpur chowk. Appellant reached Maksudpur chowk on foot at about 3.05 PM and on pointing out of informer, he was stopped. PW-7 was thereafter deputed by PW-9 to inform PW-3 Rajinder Prasad, SHO about the secret information and apprehending of appellant. PW-3 reached the spot at about 3.30 PM. PW-9 gave notice under Section 50 of the Act to the appellant but he declined to be searched either before a Magistrate or a Gazetted officer. Appellant was holding a bag in the right hand. On opening, same was found containing a steel box. In the steel box, heroin wrapped in a polythene their was found to be kept. On weighment, weight of recovered heroin came out to be 303 grams out of which 50 grams was separated as sample. Sample and remaining heroin were converted into two parcels and sealed with the seals of CPS and RPV. Form CFSL was filled in and specimen of both the seals were also affixed thereon. Both the parcels were seized vide memo Ex. PW-3/2. PW-9 sent the rukka Ex. PW-9/2 and on the basis thereof FIR (carbon copy Ex.PW-2/1) was registered. Both the parcels and CFSL form were handed over to PW-3 for being deposited in malkhana. Sample parcel was sent for analysis to FSL and as per report Ex.PX the sample gave positive test for diacetylmorphine. After completing investigation, chargesheet was filed against the appellant.

3. In the statement under Section 313 Cr.P.C., plea taken by appellant is of plain denial. He examined Uttam Lal, DW-1 who stated that appellant was lifted from his house at 3.30 or 4.00 AM at the instance of Yash Pal with whom the father of

appellant was having civil litigation.

4. To bring home the charge under Section 21, the prosecution examined 9 witnesses in all including PWs 3, 4, 7 and 9, alleged witnesses of recovery. Believing the statements of PWs and disbelieving the plea raised by appellant, he was convicted and sentenced in the manner stated above.

5. It was firstly contended by Sh. Sanjeev Kumar for appellant that notice under Section 50 Ex.PW-9/1 served on the appellant could not be treated as communicating to him that he had a right under law to be searched either before a Magistrate or a GO. Relying on the decision in *Namdi Francis Nwazor v. Union of India and Anr.*, : 1996 CriLJ2503 , it was urged that provision of Section 50 is attracted in the present case. In *Namdi Francis's* case the petitioner who was leaving India on 23rd June 1987 by Air India Flight No. AI-860 from Delhi to Lagos via Bombay, had booked one bag which had already been checked-in and was lodged in the aircraft and on examination the same was found to contain 153 cartons out of which one cartoon carried polythene packet having brown colour powder suspected to be heroin. Admittedly, notice under Section 50 had not been served on the petitioner. One of the submissions advanced before the Apex court was that as there had been violation of Section 50. While dismissing the appeal, in Para 4 of the decision it was observed - 'We must hasten to clarify that if a person is carrying a hand bag or like and the incriminating article is found there from, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act.' It is these observations to which my attention was drawn on behalf of the appellant. Question of applicability of provision of Section 50 in the case where a person carried bag and narcotic drug or psychotropic substance recovered there from, came to be considered by the Supreme court in the decisions in *Kalema Tumba v. State of Maharashtra and Anr.*, 1999 SCC 1422 and *Kanhaiya Lal v. State of M.P.*, : (2000)10SCC380 . In both these decisions it was held that in such a case recovery being not from the person of the accused the provision of Section 50 would not apply. To be noticed that in *Kalema Tumba's* case, judgment in *State of Punjab v. Jasbir Singh*, : 1996(54)ECC79 wherein contrary view was taken, was considered and it was held that judgment stands overruled by Constitution Bench decision in *State of Punjab v. Baldev Singh*, :

(1999)6SCC172 . In Namdi Francis's case (supra) view similar to that taken in Jasbir Singh's case (supra) had been taken. In view of Kalema Thumba and Kanhaiya Lal's case (supra), said submission about non-compliance of provision of Section 50 is repelled being without any merit.

6. It was secondly argued on behalf of appellant that there is no credible evidence that CFSL form was filled in, deposited in malkhana and sent Along with sample parcel to the laboratory. PW-3 Rajinder Prasad, SHO, HC Om Prakash, PW-7 and ASI Chander Pal Singh, PW-9 (I.O.) are the witnesses of recovery. In his examination-in-chief PW-3 deposed that CFSL form was filled in and specimen seals affixed thereon; he left the spot Along with both the parcels and CFSL form and deposited the same in malkhana. It is also in the examination-in-chief of PW-7 that both the parcels and CFSL forms were taken into possession by the SHO. In his examination-in-chief PW-9 also stated that SHO was handed over both the parcels, form of CFSL and copy of seizure memo before he left the spot. It was not even remotely suggested in cross-examination to any of these PWs that neither CFSL form was filled in nor was it handed over Along with two parcels to PW-3 before he left the spot. It is in the deposition of HC Naipal Singh, PW-5 that while he was working as MHCM, PW-3 deposited on 16th August 1999 in malkhana two parcels duly sealed with the seals of CPS and RPV having the same impression as on CFSL form and he made entry in Register No. 19 at Seriall No. 2838 (Copy Ex. PW-5/1). It is further in his deposition that on 28th September 1999, sample parcel Along with CFSL form was handed over to Constable Rohtas vide RC No. 160/21 for being deposited in FSL, Malviya Nagar. In crosse-examination, he admitted that in Col. No. 4 of the entry made in Register No. 19 the contents of recovery memo have been reproduced. To buttress the argument referred to above, my attention was drawn on behalf of the appellant to the contents of Ex. PW-5/A and statement of Constable Rohtas, PW-6 who deposited the sample parcel with the said laboratory on 28th September 1999 as also the decision in Amarjit Singh and Anr. v. State (Delhi Admn.) 1995 (1) C.C.C 164 . Ex. PX is FSL report which notices that the seals on sample parcel tallied with the specimen seal impression forwarded. Obviously, specimen seal impressions referred to therein refer to CFSL form. In the face of said statements of PWs., 3, 7, 9 and 5, reliance on the entry Ex. PW-5/1 in Register No. 19 is misplaced as it was only a

reproduction of the contents of seizure memo as admitted by PW-5. Further, in view of contents referred to above of the report Ex. PX as also testimony of PW-5 that CFSL form was handed over Along with sample parcel to PW-6 for being deposited in laboratory, omission to state by PW-6 that Along with sample parcel he also took CFSL form to the laboratory is not fatal in the case. Amarjit Singh's case (supra) is distinguishable on facts. From aforesaid discussion, it must follow that appeal has no merit.

7. Accordingly, appeal is dismissed being without any merit.

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