

**Shiv Narain Vs. State**

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**Court :** Delhi

**Decided On :** Oct-01-1994

**Reported in :** 1994IVAD(Delhi)524; 1994(31)DRJ268

**Judge :** Dalveer Bhandari, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

**Appeal No. :** Criminal Appeal No. 37 of 1992

**Appellant :** Shiv Narain

**Respondent :** State

**Advocate for Pet/Ap. :** J.P. Jain,; R.K. Jain and; R.D. Jolly, Advs

**Judgement :**

**Dalveer Bhandari, J.**

(1) The appellant has filed the present appeal against the judgment and order dated 3rd February, 1992 passed by Mr. J.M. Malik, Additional Sessions Judge, Delhi. The appellant has been convicted under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and has been sentenced to undergo rigorous imprisonment for a period of ten years and a fine of Rs.1 lakh has been imposed and in default of payment of fine, the appellant has to further serve simple imprisonment for six months.

(2) The brief facts necessary to dispose of this appeal are as follows:-

(3) Mohinder Singh, Sub Inspector, Police Station Town Hall received a secret information from the informer that the appellant was carrying some narcotic drugs at 3.15 p.m. on 12th July, 1990. He brought the information to the knowledge of the Station House Officer of Town Hall Police Station.

(4) Mr. Mohinder Singh, Sub Inspector left the police station along with Constable Ved Prakash. Dharam Singh, Constable met them on the way and five persons were requested to join the raiding party. Balbir Singh, public witness also joined the raiding party. On pointing out of the informer at about 3.25 P.M., the appellant who was standing in Gali Pradhan Wali, Chandni Chowk, Delhi, near the shop of Ram Chander Kishan Chander Sariwala, was apprehended.

(5) Harbans Singh, S.H.O. also arrived at the spot. Thereafter the appellant was informed that if he so desires, he could be produced before a gazetted officer or a Magistrate for conducting his search, but the accused refused. According to the version of the prosecution, the police gave a notice in writing to the accused and his reply was also reduced in writing. The subsequent search of the accused resulted in recovery of one match box containing smack, wrapped in polythene paper from the right hand side pocket of his pant and after weighment, it came to 3 grams. Out of this recovered smack, 1 gram was taken as a sample and the remaining smack was packed and sealed with the seal of H.L.M. and M.S.G. Thereafter other necessary formalities were completed. C.F.S.L. form was filled in and both the seals were affixed thereon. Both the seals after use were handed over to Balbir Singh, public witness. The case property was seized vide recovery memo Exhibit Public Witness .2/B. Ruqqa Exhibit Public Witness .2/A was sent for registration of the case.

(6) Ajit Singh, A.S.I, registered the present case. The sample was sent to C.F.S.L., Chandigarh. The report of C.F.S.L., Exhibit Public Witness .6 of the seal revealed that diacetyl morphine has been detected in the sample. Consequently, the accused was charged under Section 21 of N.D.P.S. Act.

(7) During the course of trial, the accused appellant pleaded not guilty. The appellant alleged that the police have attempted to trump up the case against him. He explained that he used to sell goods on footpath in Chandni Chowk. He used to oblige the policemen. However, he piqued the police by refusing 'Hafta'. Harbans Lal, PW- 1 had stated in his statement that at about 3.25 p.m., he reached the spot. Accused-appellant was apprehended by Mohinder Singh, A.S.I. He further stated that in his presence, notice under Section 50 of N.D.P.S. Act was given to the accused and the said notice is Exhibit Public Witness .1/A. The accused was asked in case he wanted, he could be produced before a gazetted officer or a Magistrate, but the accused declined the said offer and mentioned so, on the said notice itself in his own hand. Thereafter on search, one match box was recovered containing smack. After the packets were sealed and marked, they were given to Balbir Singh, public witness. On both the packets, seals were affixed. He further stated that he took both the packets and Cfsi form for depositing them in Malkhana. He stated that he can identify the smack and polythene paper and match box. In his cross-examination, he stated that he stayed at the spot for about one hour to one and quarter hour. His statement was recorded at the police station and not at the spot. He further stated that he did not remember when he collected his seal and who collected them from the public witness.

(8) Mr. Ajit Singh has been produced by the prosecution to prove the Ruqqa.

(9) Mohammed Harren, who was working as Malkhana Moharrer at Police Station Town Hall, was produced as Public Witness .3. He submitted that the Inspector Harbans Lal deposited two packets with the seals of H.L.M. and M.S.G. along with the C.F.S.L. form, which was also bearing the same seals. Public Witness .4, Balbir Singh, who was a small shopkeeper in Chandni Chown, was produced. He also supported the prosecution version. Similarly Public Witness .6 Mohinder Singh, Sub Inspector also fully supported the story of the prosecution.

(10) Learned counsel for the appellant has challenged the judgment on the ground that Section 50 of the N.D.P.S. Act is mandatory and there is no compliance of Section 50, as envisaged by the Act. He submitted that the appellant was not given an option, as envisaged by the Act. He has also drawn my attention to the

latest judgment of the Hon'ble Supreme Court in the case of State of Punjab Vs . Balbir Singh, : 1994 CriLJ3702 . In this case, their Lordships of the Supreme Court has held that Section 50 is mandatory and non- compliance of Section 50 would vitiate the entire trial. Learned counsel appearing for the State refuted this allegation and invited my attention to the notice under Section 50, which is Exhibit P.W.I/A dated 12th July, 1990. Bare reading of this notice clearly reveals that the accused/appellant was given a clear option whether he would like the search before a gazetted officer or a Magistrate, as envisaged by Section 50 of the N.D.P.S. Act. On this notice itself, the accused/appellant in his own hand-writing has mentioned that 'I do not want my search either before gazetted officer or Magistrate'. In view of this noting on the notice u/s 50 of the N.D.P.S. Act, I do not find any merit in this submission of the counsel for the appellant that there has been non-compliance of Section 50 in this case. In this case, I find that there is strict compliance of Section 50 of the N.D.P.S. Act. Learned counsel for the accused/appellant also submitted that there has been non-compliance of Section 57 of the N.D.P.S. Act. Section 57 is reproduced as under:-

'57.Report of arrest and seizure - Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.'

According to this Section, when any arrest or seizure is made under this Act, then within 48 hours, a full report or particulars of such arrest or seizure has to be sent to the immediate superior officer. Learned counsel for the appellant submits that no such information in writing was sent to the superior officer within 48 hours. In the instant case, the senior police officer, as envisaged in the Act, himself came at the spot immediately after the accused was apprehended and was there for about an hour to hour and quarter and he was orally appraised of the seizure and arrest and it is not the requirement of the legislation that information has to be given in writing. In my opinion, there is no non-compliance of Section 57, either as argued by the learned counsel for the appellant.

(11) In *Nathu Ram v. State* 1989 (3) DL 38, this Court has held that information reduced in writing to the superior officer is directory and not mandatory.

(12) In the instant case, the Station House Officer himself was present, therefore, no information was required to be sent to the S.H.O. There is no merit in the submission of the learned counsel that Section 57 of the said Act has been violated.

(13) The First Information Report was sent to the area magistrate within 24 hours, as envisaged

(14) I have carefully considered the submissions of the counsel for the accused-appellant and analysed the judgments cited at the bar. I do not find any infirmity in the impugned judgment. Consequently, the appeal is rejected.

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