

**Rajinder Kumar @ Titoo Vs. State**

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**Court :** Delhi

**Decided On :** Jul-10-1997

**Reported in :** 1997IVAD(Delhi)601; 1998CriLJ51; 70(1997)DLT585; 1997(42)DRJ536

**Judge :** Jaspal Singh, J.

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

**Appeal No. :** Criminal Appeal No. 120 of 1992

**Appellant :** Rajinder Kumar @ Titoo

**Respondent :** State

**Advocate for Pet/Ap. :** K.B. Andley, Adv

**Judgement :**

**Jaspal Singh, J.**

(1) On the fateful day of July 14, 1988 at about 7.15 P.M. the appellant was arrested under Section 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) hereinafter called 'the Act'). The allegation was that he was in possession of 1 Kg. of heroin. He was convicted and sentenced under Section 21 of the Narcotic Drugs and Psychotropic Substances Act on July 21, 1992. The appeal comes up today for final disposal.

(2) Should I confirm the order or set him free? I feel he deserves freedom. The reasons are not far to seek.

(3) The only witness from the public who was introduced to lend support to the alleged recovery has not supported the prosecution version. As if all this was not enough, we find that he himself had been facing prosecution in as many as four cases. Joining such a witness in a raiding party itself makes the entire investigation look inauspicious.

(4) Yet another ground which prompts me to decide the appeal in favor of the appellant is offer under Section 50 of the Act was partial. The appellant was only informed that if he so wished he could be searched in the presence of a Gazetted Officer. He was not informed that in the alternative the search could be before a Magistrate too. Anyhow, since a shady character had been introduced as a public witness, I feel the prosecution should have reduced the notice into writing. For this I take inspiration not only from the judgment of the Supreme Court in *State of Punjab v. Jasbir Singh & Ors.* (1996) Ccr 51 but also from the observations of my learned brother Dalveer Bhandari, J. in *Munni Lal v. The State* 1995 Jcc 110.

(5) The third reason relates to the Central Forensic Science Form. Though the Investigating Officer tells us that the C.F.S.L. form was prepared and was deposited with the Moharar Malkhana, the extract placed on the record relating to the entries in the Register belies this assertion. Had any Cfsi form been deposited with the Moharar Malkhana there would have been an entry to that effect in the Register itself. There is also no entry in the Register to show that the Cfsi form was taken along with the sample to the Central Forensic Science Laboratory. There are judgments to the effect that absence of evidence on this aspect of the matter would go to the benefit of the accused. Reference, in this respect, may be made to *Chameli Devi v. State*; 1993 Jcc 293; *Mool Chand v. State*; 1993(2) Delhi 14; *Anup Joshi v. State*; 1992(2) Cc Cas 314 and *Abdul Gaffar v. The State*; 1996 Jcc 497.

(6) Lastly, it is the report of the Cfsi itself which also needs to be noticed. It is a typed report. The typed portion makes no reference to the seal found on the sample parcel. The entry with regard to seal S.K. has been made with a pen. Who

made this entry and when? We just do not know. Even otherwise, the formation of the sentence makes the whole thing look fishy. If read Along with the subsequent entry made with ink the sentence runs as under.

(SK)(with pen)

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'One sealed cloth parcel / containing 10 gms. ....';

Even if (SK) which has been inserted with a pen is read into as being a part of the report it does not show that 'SK' relates to any seal. Had there been a reference to the seal, the sentence would have probably run as under.

'ONEsealed cloth parcel bearing the seal Sk containing 10 gms. ....'

Since there is no evidence as to who made this entry with pen and whether it had been made authorisedly. I feel that even the report of the Cfsi Ex.6/D cannot be treated as above suspicion. As a result of my above discussion. I hold that the appeal deserves to be allowed. Consequently, it stands allowed and as a result the appellant stands acquitted. Fine if deposited may be returned to him.

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