

**Pradeep Kumar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/705043](http://sooperkanoon.com/705043)

**Court :** Delhi

**Decided On :** Jul-30-1997

**Reported in :** 70(1997)DLT607

**Judge :** Jaspal Singh, J.

**Acts :** Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 50

**Appeal No. :** Criminal Appeal No. 211 of 1994

**Appellant :** Pradeep Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Surendra Miglani and; Mukta Gupta, Advs

**Judgement :**

**Jaspal Singh, J.**

(1) Pradeep Kumar is aggrieved by the judgment of conviction and the order of sentence passed against him by the learned Additional Sessions Judge under Section 20 of the Narcotic Drugs & Psychotropic Substances Act.

(2) The prosecution alleges that on 31st of March, 1993, consequent upon a secret information, a raiding party was formed, the appellant was nabbed, a notice under Section 50 of the Act was given and thereafter 25 grams of Charas was

recovered from his possession out of which sample weighing 5 grams was taken out. The sample so taken and the remaining Charas were thereafter put in separate parcels and sealed, first with the seal of the Investigating Officer and thereafter with the seal of the Station House Officer.

(3) The learned Counsel for the appellant has assailed the finding of the learned Additional Sessions Judge on a number of grounds. His first contention is that no notice under Section 50 of the Act was given and that in any case the notice alleged to have been reduced in to writing (Ext. Public Witness PW3/8) seems to have been fabricated later on with additions made therein. The second ground of attack is that the C.F.S.L. Form was neither deposited with the Moharir Malkhana nor was sent to the C.S.F.L. Thirdly, he argues, that no intimation in writing was sent within 48 hours of the arrest and seizure as mandated by Section 47 of the Act. Lastly, he points out that the entire version put forth by the prosecution deserves to be rejected as no effort was made by the Investigating Officer to join any witness from the public.

(4) I have examined the document Ex. Public Witness Public Witness 3/8. It is with regard to the alleged notice given to the appellant under Section 50 of the Act. It does bear the signatures of the appellant. However, its perusal would go to show that though it is written with one particular ball pen by one particular individual whose name we just do not know, the same having not been revealed in the evidence, the lines pertaining to the refusal by the appellant to be searched in the presence of a Gazetted Officer or a Magistrate have been written with a different ball pen and by a person who was not the author of the main body of the notice. I say so because even to the naked eye, it would be apparent that the refusal is in a totally different handwriting. Now only this, the writing with regard to the refusal appears to have been inserted later on. This would be borne out from the fact that they do not form part of the main body of the notice. My impression is that after the main body of the notice had been written and after the signatures of the appellant had been obtained thereon, the space in between the main body and the signatures of the appellant was utilised to insert the said writing. I say so because even a cursory look on that writing would go to show cramming of the written lines.

(5) I also tend to agree with the learned Counsel for the appellant that the prosecution cannot be taken to have proved that the C.F.S.L. Form was actually deposited with the Moharir Malkhana or that it was actually sent thereafter to the C.F.S.L. Of course, the Investigating Officer stated that the C.F.S.L. Form was filled in. It is also true that the Moharir Malkhana has made a statement that the C.F.S.L. Form was deposited. It also cannot be denied that the constable who took the sample parcel to the C.F.S.L. has deposed that he had deposited the C.F.S.L. Form with the C.F.S.L. However, I am not inclined to place reliance on this oral evidence as it is not supported by the documentary evidence. Had the C.F.S.L. Form been deposited with the Moharir Malkhana and had it been handed over to the constable who had taken the sample parcel to the C.F.S.L., it would have found mention in the Register of the Moharir Malkhana. It find no such mention. There is no entry to the effect that the said Form was deposited or was later sent to the C.F.S.L.

(6) Section 57 of the Act requires that information with regard to arrest and seizure must be sent within 48 hours. There is no evidence that any such information was sent.

(7) Besides what has been recorded by me above, I find myself one with the learned Counsel for the appellant that the prosecution version cannot be accepted as gospel truth and that doubts would legitimately be raised as the Investigating Officer made no effort to join any witness from the public. It is not a case of sudden apprehension and recovery. It is a case where secret information had been received. It is in evidence that there were shops and that consequently persons from the public were available to the Investigating Officer at his elbow. And yet he made no effort to join any witness from the public.

(8) I feel, that keeping in view what has been noticed by me above the failure of the Investigating Officer to join witnesses from the public assumes significance.

(9) For the reasons recorded above, I hold that the appeal deserves to be allowed. I do so. The conviction of the appellant under Section 20 of the Act and the sentence passed there under stand set aside. Fine, if deposited, be refunded. Let the appellant be set free, if not wanted in any other case.

