

**Ashok Kumar Yadav Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/710000](http://sooperkanoon.com/710000)

**Court :** Delhi

**Decided On :** Jul-23-2001

**Reported in :** 2002(79)ECC773

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

**Appeal No. :** Criminal Appeal No. 42 of 1995

**Appellant :** Ashok Kumar Yadav

**Respondent :** State

**Disposition :** Appeal allowed

**Judgement :**

ORDER

**R.S. Sodhi, J.**

1. This criminal appeal is directed against the judgment and order dated 23.1.1995 of the learned Additional Sessions Judge in Sessions Case No. 106/1994 whereby the learned Additional Sessions Judge held the appellant guilty under Sections 20/61/85 Narcotic Drugs and Psychotropic Substances Act and further by his order dated 24.1.1995 sentenced the appellant-accused to undergo R.I. for 10 years with a fine of Rs. one lac and in default of payment of fine to further undergo R.I. for one year.

2. The brief facts of the case as noted by the Additional Sessions Judge are as follows:

3. In brief the case of the prosecution is that on 20.1.94 S.I. Raman Kumar along with H.C. Raj Kumar and other Consts. were on patrol duty and were present near Rain Basera Meena Bazar. At about 7.10 P.M. a secret information was received that a young boy who is having black colour school bag is standing near the Service Road Gate Major Sheikh Kalimullah who is having Charas in large quantity. This information was reduced into writing by the S.I. 4/5 passers-by were asked to join the raiding party and one Hasin Khan was joined in the raiding party. SHO was informed on telephone about this information and request was also made that ACP should also be informed about it. Thereafter the raiding party reached at the spot and at about 7.25 P.M. one person whose name was later on known as Ashok Kumar Yadav who was wearing pant and shirt and a black colour school bag was hanging on his shoulder. He was apprehended on the pointing out of the informer. In the meantime SHO and ACP came at the spot in their Govt. vehicle. The accused was disclosed about the contents of the secret information and a Notice Under Section 50 N.D.P.S. Act was given to the accused but he declined to be searched in the presence of the Magistrate. However, he agreed to be searched in the presence of ACP. ACP then directed the SI to check the bag which was found to contain one plastic and cloth bag which contained Charas in the shape of sticks. There were in all nine sticks which on being weighed was found to be 1 kg. 250 gm. From all the nine sticks 100 gm. was taken out as sample. Sample and the remaining charas were then made in two pulandas and sealed with the seal of RKJ and BS. Form CFSL was filled in and seal impressions put on the same. SHO kept his seal with himself and I.O. handed over his seal to PW Hasin Khan. The recovered articles along with form CFSL were taken in police possession. SHO took possession of the case property and copy of recovery memo and deposited the same with MHC(M). ACP and SHO left the spot at about 8.40 P.M. He sent rukka to the Police Station. After registration of the case personal search of the accused was conducted. Statement of the witnesses were recorded. Site plan was prepared and after completing the necessary investigation the accused was challenged.

4. Charge Under Section 20/61/85 N.D.P.S. Act was framed against the accused which was read over and explained to the accused in his own language to which he pleaded not guilty.

5. The case when called out today, nobody appeared for the appellant in support of the appeal, inspite of warning being indicated in the cause list. Since this is a case of 1995 it can brook no further delay. Mr. R.P. Luthra is present on behalf of the Legal Aid. I therefore, appoint him as amicus Curiae to assist me in this case.

6. With the assistance of learned amicus Curiae and learned Counsel for the State, I have gone through the record of the case. Learned amicus curiae, after going through the record of the case, argues that this is a case where there has been violation of the mandatory provision of Section 42 of the Act and, therefore, conviction cannot be sustained. He draws my attention to the statement of SI Raman Kumar Jha PW-9, who states as follows:

On 20.1.94 I was posted at P.S. Jama Masjid. On that day I along with HC Raj Kumar, Const. Arun Kumar, Mohinder & Masih Haider were on patrol duty and at about 7-10 p.m. near Rain Basera, Meena Bazar I received secret information that a young boy having a black colour school bag is present at the gate of Service Road Major Sheikh Kalimullah and is in possession of charas. On this I tried to join 4-5 persons from the public. One Hasin Khan joined the raiding party. He was told about the information.

We waited at the aforesaid place and at about 7.25 p.m. at the pointing out, was apprehended who was having a bag at the shoulders. In the meantime SHO and ACP also arrived at the spot. SHO/ACP enquired about the facts and asked the accused if he would like to be searched before a GO or MM and notice Under Section 50 NDPS Act was given. Notice is Ex.PW-1/B. Accused refused. Accused himself handed over the bag to ACP and on being checked it was found to contain charas in the form of nine sticks. It was weighed and found to be 1 kg. and 250 gms. Out of which 100 gms was taken out as sample. Sample and the remaining charas were made on two different pulandas and sealed with the seal of RKJ and BS. They were taken into police possession vide memo Ex.PW-1/A. Form CFSL was filled on and seal impression put on it. SHO kept his seal with himself and I

gave my seal to Hasin Khan. I, prepared ruqqa Ex.PW-5/A and sent the same through Const. Arun Kumar. At this stage case property sealed with the seal of the Court is opened. Bag is Ex.P1. Charas is Ex.P2 and polythene paper is Ex.P3. SHO took possession of the case property and deposited the same into with moharrar malkhana. I prepared site plan Ex.Pw-9/A, which contained marginal note. I also prepared the information memo Ex.PW-9/B.

Accused was arrested and personal search was conducted vide memo Ex.PW-1/C. Chemical examination result is Ex.PW-9/C. I recorded the statement of the witness and prepared the challan.

7. From a perusal of the statement of PW-9, it is clear that the secret information, stated to have been received by him, was not reduced to writing. thereforee, a copy thereof could not be sent to his superior officer. This factual position renders Section 42 violated. Supreme Court in State of Punjab v. Balbir Singh : 1994 CriLJ3702 has held that Section 42 is mandatory and its violation would render the conviction bad.

8. Learned Counsel for the State, after going through the record of the case, fairly conceded that Section 42 has not been complied with and that no writing, if at all taken, exhibited in the case.

9. Having heard learned Counsel for the parties and having gone through the record of the case, I find that Section 42 of the NDPS Act has not been complied with. Non-compliance of Section 42 would vitiate the conviction. Since Section 42 is a mandatory provision, its compliance must be insisted upon to sustain conviction.

10. Relying on the Judgment of the Supreme Court in State of Punjab v. Balbir Singh : 1994 CriLJ3702 , I acquit the appellant of all charges. Criminal Appeal No. 42/1995 is allowed.

11. The appellant be released forthwith if not wanted in any other case.