

Gurdev Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-02-1996

Reported in : 1996(1)WLN425

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Cr. Jail Appeal No. 405 of 1995

Appellant : Gurdev Singh

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Bhagwati Prasad, J.

1. On 3.8.94 Mr. Richpal Singh P.W. 5. who was working as S.H.O. Sangaria had gone for usual patrol at 6 p. m. It is the case of the prosecution that while he was on patrol, he received an information at about 6.30 p. m. that the accused Is in possession of popy husk and is likely to go to Punjab by bus and presently the accused Is standing near Udham Singh Chowk. This Information received by P.W. 5 Richpal Singh was recorded by him as Ex. P/4. This document Ex. P/4 was recorded In compliance with Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The case of the defence is that in terms of Section 42(2)

this information was not communicated to his superiors.

2. Without going into the further details of the prosecution case or defence raised by the accused in this case, the present case can be disposed of only on the small point:(1) that the information recorded by the Investigating Officer Under Section 42 in the shape of Ex. P/14 was not communicated in terms of Section 42(2) of the Act and that is not disputed by the learned public prosecutor.

3. The learned Sessions Judge while convicting the accused has held in his judgment that the requirement of Section 42, though mandatory, could not be followed in this case, because, the information was received by the Investigating Officer during the course of patrol. Therefore he could not send the information to his superior Officers. Thus, it is not disputed that the information recorded in Ex. P/14 was not communicated in terms of Section 42(2).

4. The Hon'ble Supreme Court in a case reported in *Mohinder Kumar v. The State, Panaji, Goa* : 1995 CriLJ2074 has held that whenever a prior information is received by the Investigating Officer, then it is incumbent upon the Investigating Officer to record the Information and report to his Juniors. In the instant case. Though, the Investigating Officer recorded the prior information as required by Section 42(1) of the Act of 1985, but had not forwarded it to his superior Officers as required by Section 42(2). Thus, there is a total non-compliance of Section 42(2) of the Act of 1985. This has been held by this Hon'ble Court in *Billu v. The State of Rajasthan* 1994 (2) RLW 39 that the non-compliance of Section 42(2) is fatal to the prosecution and it vitiates the whole trial.

5. In view of the settled proposition of law, the accused cannot be convicted of the alleged offence. The conviction passed against the accused Under Section 8/15 is therefore, quashed. Consequently, he is acquitted of the charges and the sentences passed against him are set-aside. The accused is in Jail. He should be released forthwith, if not required in any other case.