

are obliged and as public authorities, are bound to comply with the orders dated 13-2-1991, particularly clause/para (viii) of it, relating to the place or site of allotment of alternative sites and other stipulations, in letter and spirit giving the said order full effect. The appeal shall stand allowed, accordingly. No costs.

(2001) 6 Supreme Court Cases 692

(BEFORE DR A.S. ANAND, C.J. AND A.P. MISRA  
AND SHIVARAJ V. PATIL, JJ.)

SAJAN ABRAHAM

.. Appellant;

*Versus*

STATE OF KERALA

.. Respondent.

Criminal Appeal No. 1022 of 1997<sup>†</sup>, decided on August 7, 2001

**A. Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 42(1) & (2) — Duty of the officer concerned to take down in writing any information under sub-section (1) and to send a copy thereof to his immediate superior official under sub-section (2) — Whether complied with — When the officer concerned was on patrol duty and on receiving the information that accused was selling contraband drugs at a particular place he immediately rushed there and apprehended him, held, compliance with the requirements of sub-sections (1) and (2) would have delayed the trapping of the accused which might have led to his escape — Hence on facts held, there was no violation of S. 42**

In this case PW 3 Head Constable got information at about 7 p.m. that the appellant was selling injectable narcotic drugs at a particular place. When he proceeded for the police station to give this information to his immediate superior, SI of Police, PW 5, he found PW 5 along with his police party, who were on patrol duty coming, hence the said information was communicated there by PW 3 to PW 5. Thereafter, PW 5 along with his police party and PW 3 immediately proceeded towards the place where the appellant was standing and apprehended him. It was contended that PW 5, the officer concerned, had not recorded the information given by PW 3 with respect to the accused-appellant's involvement before proceeding to arrest him and that he after receiving the said information had not communicated it to his immediate superior which constituted violation of Section 42. Rejecting the contention, the Supreme Court *Held*:

PW 5 could not have recorded the information given by PW 3 and communicated to his superior while he was on motion, on patrol duty, in the jeep before proceeding to apprehend him. Had they not acted immediately, the appellant would have escaped. On these facts, no inference could be drawn that there has been any violation of Section 42 of the Act. (Para 7)

**B. Narcotic Drugs and Psychotropic Substances Act, 1985 — Preamble — Whether prosecution complied with mandatory provisions of the Act —**

<sup>†</sup> From the Judgment and Order dated 2-9-1997 of the Kerala High Court in Cr. Appeal No. 533 of 1994.

**a** Should be considered pragmatically — Though the mandatory provisions should be strictly complied with but if that causes delay in trapping the accused which may lead to his escape, strict compliance need not be insisted upon — Interpretation of Statutes — Mandatory or directory — Pragmatic approach applied

**b** In construing any facts to find, whether the prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with a pragmatic approach. The law under the aforesaid Act being stringent to the persons involved in the field of illicit drug traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply with, which the courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of the law. The court however while construing such provisions strictly should not interpret them so literally so as to render their compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of a mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then the prosecution case should not be thrown out. (Para 6)

**c** **C. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50 — Accused can also be informed orally about his right to be searched before nearest gazetted officer or Magistrate** (Para 10)

*State of Punjab v. Baldev Singh*, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080, followed

**d** **D. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 57 — Not mandatory — Hence if substantial compliance with it is made it would not vitiate the prosecution case**

*Held:*

**e** In this case the communication to the immediate superior had not been made in the form of a report by the officer who made the arrest and seizure but the officer had sent the copies of the FIR along with other records regarding arrest of the accused-appellant and seizure of the contraband articles were sent by the officer to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. There was no violation of Section 57. (Para 12)

*State of Punjab v. Balbir Singh*, (1994) 3 SCC 299 : 1994 SCC (Cri) 634, relied on

R-M/TZ/2439/CR

**g** Advocates who appeared in this case:  
R. Satish and T. G. N. Nair, Advocates, for the Appellant,  
K. M. K. Nair and Vipin Nair, Advocates, for the Respondent

*Chronological list of cases cited*

1. (1999) 6 SCC 172 : 1999 SCC (Cri) 1080 *State of Punjab v. Baldev Singh* followed  
2. (1994) 3 SCC 299 : 1994 SCC (Cri) 634 *State of Punjab v. Balbir Singh* relied on

The Judgment of the Court was delivered by

**MISRA, J.**— This appeal is directed against the judgment and order of the High Court of Kerala in criminal appeal setting aside an order of acquittal passed by the trial court convicting the appellant under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for 10 years and a fine of rupees one lakh, in default to undergo simple imprisonment for one year. In order to appreciate the controversy, we are herewith giving the essential matrix of facts.

2. The appellant was put on trial for an offence punishable under Section 21 of the Act. As per the prosecution story, on 10-10-1993 at 7.45 p.m. the appellant was in possession of a manufactured drug by the name of "Tidigesic" and three syringes for injecting the same, by the road near Blue Tronics Junction at Palluruthy. The Head Constable, PW 3 and two other Constables of the Special Squad got information at about 7 p.m. on the said date that a person was selling injectable narcotic drugs near Blue Tronics Junction, Palluruthy. They informed this to PW 5 Sub-Inspector of Police, Palluruthy Cusba Police Station who was coming in a jeep along with his police party. Thereafter PW 5 along with his police party including PW 3 and other members of the Special Squad went to the scene of occurrence and stopped their vehicle a little away from the spot. On reaching there they found the accused standing on the road with a packet in his hand. He was identified by PW 3 and apprehended by PW 5. On search, the packet possessed by the appellant revealed that it contained 5 strips of 5 ampoules each of Tidigesic and three injection syringes and a purse containing currency note of Rs 10. At the spot, one ampoule was taken as a sample for chemical analysis and the said contraband articles were seized as per Ext. P-1 seizure mahazar prepared at the spot. The appellant was also arrested there. The charge-sheet was submitted, the appellant pleaded not guilty.

3. The trial court found discrepancies in the evidence of the prosecution witnesses and thus disbelieved the prosecution story, hence acquitted the appellant.

4. In the trial court records, Ext. P-8 is a certificate of analysis issued by the Regional Chemical Examiner's Laboratory, Kakkanad, which shows that the article seized was buprenorphine hydrochloride solution containing 0.3 milligram of buprenorphine per millilitre and that buprenorphine is a thebaine derivative. It is accepted that baine is a phenanthrene alkaloid, an opium derivative and as such it is a manufactured drug coming within the ambit of Section 21 of the NDPS Act. As per the evidence of PW 3, he got the information about the appellant at about 7 p.m. and to ascertain this he actually arrived there at 7.30 p.m. After identifying him, he proceeded to Palluruthy Police Station to inform his superior, the Sub-Inspector of Police. But on the way he met SI of Police, Palluruthy who was on patrol duty. Then they all went to the place where the appellant was standing. The prosecution case is that before search the prosecution complied with the condition as laid

a down under Section 50 of the NDPS Act. Thereafter he was searched wherein it was found that he was in possession of 25 ampoules of Tidigesic in 5 strips and three injection syringes. PW 1 and one Shamsuddin, CW 2 are two independent witnesses of the seizure mahazar Ext. P-1 since the other three witnesses are police constables. Since Shamsuddin was not available for examination in spite of the efforts, PW 1 deposed about the said search and seizure. Finally, the High Court held that PW 1's evidence is fully corroborated by PW 3 and PW 5 with respect to the prosecution version regarding the seizure of the contraband and the arrest of the appellant by PW 5. The discrepancies in their testimony as pointed out by the trial court were trivial which do not affect the veracity or the credibility of the prosecution story. The High Court on reappraisal of the evidence came to the conclusion that the trial court was not justified in acquitting the appellant. It held that the prosecution has established with positive evidence beyond reasonable doubt that the appellant has committed an offence punishable under Section 21 of the Act, hence convicted and sentenced the appellant as aforesaid.

c 5. The learned counsel for the appellant submits with vehemence that the prosecution has violated the mandatory provisions of the Act, namely, Section 42, Section 50 and Section 57, hence conviction and sentence is liable to be set aside.

d 6. With regard to Section 42, the submission is that PW 5 has not recorded the information given by PW 3 with respect to the appellant's involvement before proceeding to arrest him in this case. This constitutes violation of Section 42 of the Act. It is true under Section 42(1), the officer concerned, when he has reason to believe from his personal knowledge or information received from any person, is obliged to take it down in writing if such information constitutes an offence punishable under Chapter IV of the Act and send it forthwith to his immediate superior. Such an officer is empowered to search any building, conveyance and in case of any resistance, break up any door or remove any obstacle for such entry, seizure of such drug or substance and to arrest such person whom he has reason to believe to have committed any offence punishable under the said Chapter. Thereafter such officer has to send a copy of this information forthwith to his immediate superior. Submission is that PW 5 after receiving the said information had not communicated it to his immediate superior which constitutes violation of Section 42. In construing any facts to find, whether the prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with a pragmatic approach. The law under the aforesaid Act being stringent to the persons involved in the field of illicit drug traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply with, which the courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of the law. The court however while construing such provisions strictly should not interpret them

so literally so as to render their compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of a mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then the prosecution case should not be thrown out. a

7. In the present case, PW 3 Head Constable got information with reference to the appellant only at about 7 p.m. that the person is selling injectable narcotic drugs near Blue Tronics Junction, Palluruthy. When he proceeded for Palluruthy Police Station to give this information to his immediate superior, SI of Police, PW 5, he found PW 5 along with his police party, who were on patrol duty coming, hence the said information was communicated there by PW 3 to PW 5. Thereafter, PW 5 along with his police party and PW 3 immediately proceeded towards the place where the appellant was standing. Had they not done so immediately, the opportunity of seizure and arrest of the appellant would have been lost. How PW 5 could have recorded the information given by PW 3 and communicated to his superior while he was on motion, on patrol duty, in the jeep before proceeding to apprehend him is not understandable. Had they not acted immediately, the appellant would have escaped. On these facts, we do not find any inference could be drawn that there has been any violation of Section 42 of the Act. b  
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8. Next submission is, the prosecution has violated Section 50 of the Act which is mandatory as held by the Constitution Bench of this Court in *State of Punjab v. Baldev Singh*<sup>1</sup>. The submission is, the appellant was not informed in writing of his right to be searched in the presence of a Magistrate or a gazetted officer.

9. We find PW 1, PW 3 and PW 5 have deposed that PW 5 had informed the respondent orally about it but the appellant opted out of this right. It is only thereafter a search was made. e

10. In the present case, we find the High Court recorded a finding that PW 5 informed the appellant about his right as provided under Section 50 of the Act which is established not only by the oral evidence of PWs 1, 3 and 5, but also by the recitals made in Ext. P-1 the seizure mahazar prepared by PW 5 and the FI statement given by the respondent (the appellant before us). The submission, however, is, communicating orally to the appellant is not a compliance under Section 50. We cannot agree. The aforesaid Constitution Bench upholds oral communication also to be valid under Section 50 of the Act. Hence, this submission has no merit. f

11. Thus in our considered opinion, we do not find, on the facts of this case, as also recorded by the High Court, that there has been any violation of Section 50 of the Act. g

12. The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full h

<sup>1</sup> (1999) 6 SCC 172; 1999 SCC (Cr) 1080

a report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW 5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext. P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW 5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW 5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act.

13. In *State of Punjab v. Balbir Singh*<sup>2</sup> this Court held: (SCC p. 322, para 25)

d “(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory.”

14. In view of our aforesaid findings, we do not find any infirmity in the impugned order of the High Court. Accordingly the present appeal fails and has no merit and is dismissed.

e (2001) 6 Supreme Court Cases 697

(BEFORE S. RAJENDRA BABU AND SYED SHAH MOHAMMED QUADRI, JJ.)

COMMISSIONER OF CENTRAL EXCISE, MEERUT .. Appellant;

Versus

f KISAN SAHKARI CHINNI MILLS LTD. .. Respondent.

Civil Appeals Nos. 4942-43 of 1999<sup>†</sup> with Nos. 4900-02, 5639, 5149, 5642, 5071, 5398-402, 5422, 5949, 5943-45, 6304-16, 5857, 6297-303, 6486-91, 6438-55, 6808-19 of 1999 and 160-61 of 2000, decided on August 21, 2001

g Excise — Valuation — Exclusion of other taxes under S. 4(4)(d)(ii), Central Excise Act — “Other taxes” — Scope — Held, covers any levy and, therefore, covers the administrative charges collected by the State Government under Ss. 8(4) & (5), U.P. Sheera Niyantran Adhiniyam, 1964 — Hence, CEGAT’s decision that such administrative charges were not includible in the assessable value of molasses cleared by the assessee sugar factory, upheld — Central Excise Act, 1944, S. 4(4)(d)(ii) — Essential

h <sup>2</sup> (1994) 3 SCC 299; 1994 SCC (Cr) 634

<sup>†</sup> From the Judgment and Order dated 19.3.1999 of the Customs, Excise and Gold (Control) Appellate Tribunal passed in Appeals Nos. E/1581/96-A and E/1628/95-A