

State of Karnataka

v.

Dondusa Namasa Baddi

(Supreme Court Of India)

HON'BLE MR. JUSTICE HARJIT SINGH BEDI HON'BLE MR. JUSTICE C.K. PRASAD

State of Karnataka v. Dondusa Namasa Baddi

Criminal Appeal No. 123 Of 1997 | 05-08-2010

1. We have heard the learned counsel for the parties.

2. This matter arises out of a search and seizure which took place on 3rd September, 1987. This appeal was also adjourned time and again since the year 1997 to await the decision of the Constitution Bench. This decision has come and is reported as Karnail Singh V. State of Haryana (2009) 8 see 539. The question posed was as to the effect of non-compliance with the provisions of Section 42 and in particular 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985. This matter was referred to the Constitution Bench owing to an apparent conflict between two judgments of this Court, Abdul Rashid Ibrahim Mansuri v. State of Gujrat (2000) 2 SCC 513 wherein it was held by a three Judge Bench that compliance with Section 42(2) Act was mandatory and failure of the police officer to of the take down the information receive~ by him in writing and to forthwith send a report to his immediate official superior would cause prejudice to the accused whereas in Sajan Abramam v. State of Kerala (2001) 6 SCC 692 which had also been decided by a three Judge Bench it had been held that substantial compliance with the provisions of Section 42 was sufficient. In Karnail Singh's case, however, the Constitution Bench has observed thus:

32. Under Section 42 (2) as it stood prior to the amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance with this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to immediate official superior and not to any other condition of the Section.

And again.

35 (d) While total non-compliance with requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not

be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question-on of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

3. Concededly in the present matter, no information was taken down in writing by the police officer or conveyed to the immediate police officer. Shri A.K. Mishra, the learned State counsel has, however, forcefully argued that there was evidence in the oral evidence of P.W. 10, the investigating officer, that he had complied the formalities enjoined by Section 42(2).

4. It is not the case of the prosecution that sufficient time was not available to record the information in writing and send it to the superior officer and in the face of it, we are of the opinion that any oral evidence of the police officer will not be in compliance with the provisions of Section 42 (2) of the Act.

5. We, accordingly, dismiss the State appeal.