

Delhi High Court Zofar vs State on 26 November, 1999 Equivalent citations: 2000 IIAD Delhi 137, 2000 CriLJ 1589 Author: M Siddiqui Bench: M Siddiqui ORDER M.S.A. Siddiqui, J. 1. This appeal is directed against the judgment and the order dated 23.3.1995 passed by the Additional Session Judge in Sessions Case No. 569/93 convicting the appellant under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lakh or in default to suffer further rigorous imprisonment for 6 months. 2. Briefly stated the prosecution case is that on 3.2.1993, a police party led by S.I. Harsurender Pal Singh (P.W. 7) of Police Station Kamla Market, upon secret information received, apprehended the appellant behind Kotha No. 5207 at G.B. Road. He was given the option (Ex. P.W. 4/A) of being searched before a Gazetted Officer or a Magistrate. The appellant declined the offer. Thereafter S.I. Harsurender Pal Singh (P.W. 7) took the personal search of the appellant and recovered a packet containing 2 gms. of smack from his pant vide Seizure Memo (Ex. PW. 4/B). The appellant was charged with an offence punishable under Section 21 of the Act and tried. The appellant abjured his guilt and alleged that a false case has been foisted on him. The learned Additional Sessions Judge, on an assessment of evidence adduced by the prosecution, accepted the prosecution case and convicted and sentenced the appellant as indicated above. 3. The point for determination in this appeal is whether on 3rd February, 1993, the contraband was recovered from the appellant's possession. The evidence of the prosecution pertaining to the recovery of the contraband revolves around the testimony of Constable Gajendra Singh (P.W. 4), S.H.O. P.L. Suri (P.W. 5), Laxmi Narain (P.W. 6) and Inspector Harsurender Pal Singh (P.W. 7). The panch witness Laxmi Narain (P.W. 6) has not supported the prosecution case. Inspector Harsurender Pal Singh (P.W. 7) corroborated by S.H.O. P.L. Suri (P.W. 5) and Constable Gajendra Singh (P.W. 4) testified that on 3.2.1993, he received the secret information (Ex. PW.7/B) on the basis of which he apprehended the appellant behind the Kotha No. 5207 at G.B. Road, Delhi; that the appellant was given the option (Ex. P.W. 4/A) of being searched before a Gazetted Officer or a Magistrate, but he declined the offer and thereafter he took personal search of the appellant and recovered 2 gms. of smack from his pant vide Seizure Memo (Ex. P.W. 4/B). He further testified that after seizure of the contraband a representative sample was drawn up from the seized contraband and the sample as well as the remaining smack were converted into separate parcels and they were duly sealed on the spot. He also testified that the CFSL form filled up on the spot and the case property along with the CFSL form was handed over to the SHO P.L. Suri (P.W. 5) for being deposited in the police Malkhana. It has also come in the evidence of Inspector Harsurender Pal Singh P.W. 7 that he prepared the rukka (Ex.P.W. 1/A) on the spot and sent it to the police station on the basis of which the FIR (Ex. P.W. 1/B) was registered at the Police Station. 4. It needs to be highlighted that the rukka (Ex. P.W. 1/A) shows that the alleged contraband was seized at 3.55 p.m. and the rukka was sent to the Police Station at 5 p.m. The secret information alleged to have been received by the Inspector Harsurender Pal Singh (P.W. 7) is Ex. P.W. 7/B.

Surprisingly, the secret information (Ex. P.W. 7/B), the notice under Section 50 of the Act (Ex. P.W. 4/A) and the Seizure Memo (Ex. P.W. 4/C) bear the number of the FIR (Ex. P.W. 1/B). The number of the FIR (Ex. P.W. 1/B) given on the top of the aforesaid documents is in the same ink and in the same handwriting which clearly indicates that these documents were prepared at the same time. The Prosecution has not offered any explanation whatsoever as to under what circumstances number of the FIR (Ex. P.W. 1/B) has appeared on the top of the aforesaid documents, which were allegedly prepared on the 'spot before registration of the FIR. This gives rise to two inferences that either the FIR (Ex. P.W. 1/B) was recorded prior to the alleged recovery of the contraband or number of the said FIR was inserted in these documents after its registration. In both the situations it seriously reflects upon the veracity of the prosecution version given by the aforesaid witnesses and creates a good deal of doubt about recovery of the contraband in the manner alleged by the prosecution. 5. There is another staggering circumstances against the prosecution which has shaken the very foundation of the prosecution case. It has come in the evidence of the Inspector Harsurender Pal (P.W. 7) that at the relevant time he had taken the personal search of the appellant vide memo Ex. P.W. 4/C). The search Memo (Ex.P.W.4/C) recites that on the appellant's personal search nothing was recovered from his possession. On the contrary the Seizure Memo (Ex. P.W. 4/B) recites that at the relevant time 2 gms. of smack was recovered from the appellant's personal search. It is significant to mention that neither the search memo (Ex. P.W. 4/C) not the Seizure Memo (Ex. P.W. 4/B) mentions the time of the alleged search and recovery. There is nothing on record to show or suggest as to which of the two memos namely, personal search memo (Ex. P.W. 4/C) and the Seizure Memo (Ex. P.W. 4/B) was prior in time. As noticed earlier, the appellant's personal search memo (Ex. P.W. 4/C) clearly shows that on personal search nothing was recorded from his possession. Thus the appellant's personal search memo (Ex. P.W. 4/C) knocks the bottom out of the prosecution case regarding the alleged recovery of contraband from the appellant's possession vide Seizure Memo (Ex. P.W. 4/B). At any rate, the network constituted by the circumstances mentioned above leaves a gap of varied dimensions through which the appellant can get out with equal facility. Unfortunately, the learned Additional Sessions Judge did not take notice of the aforesaid infirmities in the prosecution case and unjustifiably accepted the prosecution evidence. Consequently, the impugned order or conviction and sentence cannot be sustained in law. 6. For the foregoing reasons, the appeal is allowed and the impugned order of conviction and sentence is set aside. The appellant is acquitted of the offence charged under Section 21 of the Act. The appellant is in custody. He be set at liberty forthwith if not wanted in any other case. The fine, if paid, shall be refunded to the appellant.