

Manohar Lal

Vs

State of Rajasthan

Criminal M. P. No. 138 of 1996 in S.L.P. (Cri) No. 184 of 1996

(J. S. Verma, B. N. Kirpal JJ)

22.01.1996

ORDER

1. The submission of learned counsel for the petitioner is that there is non-compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short " the N.D.P.S. Act") which renders the conviction of the petitioner illegal. The learned counsel submitted, placing reliance on the decision of this Court in Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat (1995) 3 SCC 610, that the burden is on the prosecution to prove due compliance of Section 50 of the N.D.P.S. Act. It is sufficient to say that in the present case, the High Court has gone into question and recorded a clear finding that there was compliance of Section 50 of the N.D.P.S. Act inasmuch as the accused was given the option specified in the provision and on exercise of that option by him, he was searched in the presence of a Gazetted Officer.

2. Learned counsel for the petitioner further submitted that another requirement of Section 50 of the N.D.P.S. Act is that the accused should also be searched in the presence of Gazetted Officer or in the presence of Magistrate. It is submitted that this further option was not given to the petitioner in the present case. We are unable to accept such a construction of Section 50 of the N.D.P.S. Act. The provision only requires the option to be given to the accused to say whether he would like to be searched in the presence of a Gazetted Officer or a Magistrate; and on exercise of that option by the accused, it is for the officer concerned to have the search made in the presence of the nearest Gazetted Officer or the nearest Magistrate whosoever is conveniently available for the purpose in order to avoid undue delay in completion of that exercise. It is clear from section 50 of the N.D.P.S. Act that the option given there by to the accused is only to choose whether he would like to be searched by the officer taking the search or in the presence of the nearest available Magistrate. The choice of the nearest Gazetted Officer or the nearest Magistrate has to be exercised by the officer making the search and not by the accused.

3. Learned counsel also referred to an order dated 8-1-1996 made in Special Leave Petition (Crl ) No. 2546 of 1995 - Raghbir Singh v. state of Haryana - wherein, according to him a similar question has been referred for decision by a 3- Judge Bench on the basis that no decision so far has decided the question involved in the second submission made by him. It is sufficient to say that there being no decision taking a contrary view, and in our opinion, the construction being plain, it is unnecessary for us to refer this case to a 3-Judge Bench.

4. Special leave petition is dismissed. Petition dismissed.