

SUPREME COURT OF INDIA

Joseph Fernandez

Vs.

State of Goa

(K Thomas, A Mishra and S S Quadri JJ.)

05.10.1999

ORDER

1. Leave granted.

2. Learned Counsel tried to highlight a point that Section 50 of Narcotic Drugs and Psychotropic Substances Act has not strictly been complied with by P.W. 8, the Officer who conducted the search. According to the learned Counsel for the appellant the searching officer should have told the person who was subjected to search that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate. In this case P.W. 8 has deposed that she told the appellant that if he wished he could be searched in the presence of the Gazetted Officer or a Magistrate to which the appellant had not favourably reciprocated. According to us the said offer is a communication about the information that appellant has a right to be searched so. It must be remembered that the searching officer had only Section 50 of the Act then in mind unaided by the interpretation placed on it. by the Constitution Bench. Even then the searching officer informed him that "if you wish you may be searched in the presence of Gazetted Officer or a Magistrate". This according to us is in substantial compliance with the requirement of Section 50 We do not agree with the contention that there was non-compliance with the mandatory provision contained in Section 50 of the Act.

3. Learned Counsel then contended that one of the panch witnesses was not an independent witness inasmuch as he had obliged the police in other cases also. We are not inclined to say that if a person happened to witness other instances that would denude him of his independent character.

4. The last attempt made by the learned Counsel was based on a truncated sentence found in the cross-examination of P.W. 1. The analyst who tested the contraband in the laboratory, to a question in cross-examination has said that he could not answer whether the contraband contained cowdung also. In the certificate which he issued after analysis, as well as in the examination-in-chief, the

witness has stated in definite terms that the contraband was "charas". Hence, the aforesaid isolated answer is hardly sufficient to destroy the probative value of the evidence of that witness.

5. We do not find any reason to interfere with the conviction and sentence passed on the appellant based on the concurrent findings of the two Courts. Appeal is accordingly dismissed.