MANOHAR LAL

v.

STATE OF RAJASTHAN

JANUARY 22, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 :

S. 50—Search—Option to accused as to whether the search should be made in the presence of a Gazetted Officer or in the presence of a Magistrate—But choice of nearest Gazetted Officer or nearest Magistrate has to be exercised by the Officer making the search and not by the accused—The construction of the provision being plain and there is no decision taking a contrary view no need to refer to a 3 Judge Bench.

CRIMINAL APPELLATE JURISDICTION : S.L.P. (CRL) No. 184/96.

From the Judgment and Order dated 5.9.95 of the Rajasthan High Court in S.B. Crl. A. No. 537 of 1993.

S.K. Gambhir for Vivek Gambhir for the Appellant/petitioner.

The following Order of the Court was delivered :

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 and Ors.* vs. *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 this question and recorded a clear finding that there was compliance of Section 50 of the N.D.P.S. Act in as much 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.

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 given the option to choose whether he wanted to be searched in the presence of a Gazetted Officer or in the presence of a 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 thereby 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 Gazetted Officer or 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.

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.

Special leave petition is dismissed.

Petition dismissed.