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Narender Kumar Vs. State

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Court : Delhi

Decided On : Mar-28-1995

Reported in : 1995IIAD(Delhi)114; 58(1995)DLT679

Judge : Vijender Jain, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 50

Appeal No. : Criminal Appeal No. 140 of 1992

Appellant : Narender Kumar

Respondent : State

Advocate for Pet/Ap. : Sanjeev Kumar,; Hirdayjot Singh and; O.P. Goyal, Advs

Judgement :

Vijender Jain, J.

(1) This is an appeal against conviction and sentence passed by the Additional Sessions Judge dated 2.7.1992. The appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac failing which he was to further undergo simple imprisonment for one year. The incident and alleged recovery is dated 3.6.1990. According to Mr.Sanjiv Kumar, learned Counsel for the appellant, notice under Section 50 of the NDPS Act, which is 'Ex. PW-2/A', only limited option was given to the appellant before his search. I have perused the

notice and it has been mentioned that if the appellant wishes, his search could be taken before a Gazetted Officer. Similarly in the F.I.R. also this fact is reiterated. Mr. Kumar has argued that partial option would tantamount to no option in terms of the mandate of Supreme Court in view of the decision in State of Punjab v.Balbir Singh, 1994 (1) Cri 753. What the learned Counsel for the appellant has contended is that from the bare reading of Section 50 of the Ndps Act, it postulates that the appellant ought to have been given an option whether he would like to be searched before a Gazetted Officer or before a Magistrate. If the appellant was given a limited option, that would be making the option as contemplated under Section 50 of the Act nugatory as the Legislature has intended that the option should be real and meaningful and that is why option to the person accused of the offence under the Act to be searched before the Gazetted Officer or the Magistrate is given in the said Section of theAct. In support of his arguments Mr. Kumar has cited the decisions of this Court in Jagdish v. State, 1994 (3) A.D. Delhi 113, Chameli Devi v. State, (1993) 50 DLT439 and Satish @ Bombaiya v. State : 44(1991)DLT561 .

(2) On the other hand, Mr. Hirdayjot Singh, learned Counsel for the State, has contended that in the facts and circumstances of this case and in view of the testimony of PW-3 it was not necessary for the raiding party or the officer concerned to have given a notice under Section 50 of the Ndps Act. WhatMr. Singh has contended is that there was no prior information with the Police that the appellant was having article in contravention of Ndps Act. His arguments that it was a chance recovery and Mr. Singh has further contended that if that was so then there was no need for a notice under Section 50 of the Act to be given by the officer or the raiding party. Mr. Singh has also contended that in any event the notice given under Section 50 of the Act was a valid notice and on this score the conviction and sentence cannot be set aside.

(3) I have given my careful consideration to the arguments advanced by learned Counsel for both the parties. Learned Additional Sessions Judge has completely mis-read the provisions of Section 50 of the Ndps Act. To the arguments advanced by the learned Counsel for the appellant, the Additional Sessions Judge has dealt the same in the following manner.

'FOR the following reasons I do not hold with the views of the learned defenseCounsel. Arguments urged by him do not appear to be coherent. A bare reading of Section 50 Ndps Act clearly goes to show that the Investigating Agency is bound to search the accused either before a Gazetted Officer ora Magistrate. The choice has been given to the Investigating Agency and not to the accused. It is the wish and convenience of the Investigating Agency to produce the accused either before a Gazetted Officer or a Magistrate. The accused has no choice in this matter.'

(4) The aforesaid interpretation of Section 50 of the Act by the AdditionalSessions Judge is neither here nor there. The Additional Sessions Judge hascompletely mis-read the provisions of Section 50 of the Act. From the plain language of Section 50 of the Ndps Act, which is as follows :-'Conditions under which search of persons shall be conducted.-(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 42, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in Sub-section (1).(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.(4) No female shall be searched by anyone excepting a female.it would be clear that the option and choice is of the person, who is alleged to be in possession of the article and not of the Investigating Agency. The principle on the basis of which the Additional Sessions Judge has dismissed the submissions of the learned Counsel for the defense are patently mis-conceived and untenable in law. Coming to the arguments of Mr. Singh, learned Counsel for the State,that there was no need for the Police Officer to give notice under Section 50 of the NDPS Act, I find no substance in the arguments in view., of the fact that notice was given, which is 'Ex.PW-2/A', it is fallacious on the part of the State to argue that the Police Officer purported to act under law did not know that in what kind of cases, notice under Section 50 of the Act is to be given or not to be given and that is why it seems that no such argument was raised by the State before the

TrialCourt. Onceanoticeunder section50 of the Act is given by the State to the accused,it is the State, which has to explain whether the notice under Section 50 of the NDPS Act is in consonance with the mandatory requirement of the provisions oflaw.

(5) In my considered opinion and following the aforesaid cases cited by the learned Counsel for the appellant, the notice giving a partial option to the accused cannot be termed as full compliance of Section 50 of the Ndps Act. On this groundalone, the conviction and sentence of the appellant cannot be sustained. The result is that the appeal is allowed. The judgment of conviction and sentenced passed by the Additional Sessions Judge is set aside. Appellant be released forthwith, if not required in any other case.Appeal is allowed accordingly.

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