Supreme Court of India
T.T. Haneefa vs State Of Kerala on 21 April, 2004
Bench: K.G. Balakrishnan, B.N. Srikrishna

CASE NO.:
Appeal (crl.) 1336 of 2002

PETITIONER:
T.T. HANEEFA

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 21/04/2004

BENCH:
K.G. BALAKRISHNAN & B.N. SRIKRISHNA

JUDGMENT:

JUDGMENT 2004 Supp(1) SCR 604 The following Order of the Court was delivered :

The appellant was found guilty by the Special Judge, Vadakara, for the offence punishable under Section 21 of NDPS Act and was sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs. l lakh, in default R.1: for one year. He challenged his conviction and sentence and this appeal was rejected by the High Court. Aggrieved by the same the present appeal.

The prosecution case was that on 24.1.1997 P.W.l, who is Circle Inspector of Police, Nadakkavu, found the appellant on a public road on the western side of Beach Hospital. PW-1 Circle Inspector had prior Information about the sale of brown sugar by some persons in the Beach road and he recorded that statement and went to that place Pws. 2 and 3 were also present along with PW-1. When this police party went there, the appellant was standing on a foot path and PW-1 questioned him and told that he suspected that the appellant must have been carrying some narcotic drug. PW-1 told the appellant that he has got right to demand the presence of a Magistrate when his body being searched. The appellant replied there is no such necessity of the presence of the Magistrate. PW-1 recorded that statement in Ext. P-1 seizure mahazar and in the presence of two witnesses the appellant was searched and 3.700 grams of brown sugar was recovered from the left shirt sleeve of the appellant. The sample taken from the seized article was sent for chemical analysis and it was proved to be brown sugar.

The appellant had contended before the special Judge as well as the High Court that there was violation of section 50 of NDPS Act. This plea was rejected and the appellant was accordingly convicted for the offence charged.

We heard learned counsel for the appellant and learned counsel for the State.

The counsel for the appellant submits that under Section 50 of NDPS Act, accused should have been told that he has got a right to be searched in the presence of gazetted officer or a Magistrate and this

option was not given to the appellant and it was argued that in the instant case, the appellant was asked only whether he would like the presence of a Magistrate and in that way there was violation of Section 50 of NDPS Act. We are unable to agree with the plea raised by the appellant. Ext. p. l mahazar shows that before the search the appellant was asked whether he would like the presence of a Magistrate, he declined to avail that privilege and thereafter the search was conducted and drug was recovered from his possession.

The plain reading of Section 50 of NDPS Act does not show that the accused has got a right of option either a gazetted officer or the Magistrate, rather the option is for the officer who conducts the search. Section 50 of NDPS Act relevant portion reads as follows :

"any officer duty authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, 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".

If the accused says that search shall be in the presence of gazetted officer or Magistrate, the officer can choose any one of them depending upon the availability of gazetted officer or the Magistrate. In this case the appellant was given an option to be searched in the presence of Magistrate, he did not exercise that right. The counsel for the appellant drew our attention to the decision of this Court in Beckodan Abdul Rahiman v. State of Kerala, [2002] 4 SCC 229, wherein this Court held that there was violation of Article 50 of NDPS Act. It is pertinent to note that the nature or option given to the accused by the searching officer and the facts show that in that case the inquiry was made by the searching officer as to whether the accused would like to meet any higher officer or a gazetted officer and the accused replied in negative. These words used by the searching officer were certainly not in compliance of Section 50 of NDPS Act. It was in that background this Court set aside the conviction on the ground that there was violation of Section 50 of NDPS Act. In the instant case, we do not think there is any violation of Section 50 of NDPS Act, as the accused was given the right to be searched in the presence of a Magistrate as he failed to opt for that we do not think that there was any procedural illegality.

The appellant was in possession of narcotic drug and evidence of the prosecution proved that the offence was committed. There is no merit in the appeal and appeal is dismissed accordingly.

The appellant was granted bail by this Court on 13-10-2003. The appellant is directed to surrender to his bail bonds within a period of two weeks failing which the special Judge takes appropriate steps to arrest the appellant to undergo remaining part of the sentence.