

Namdi Francis Nwazor vs Union Of India (Uoi) And Anr. on 27 February, 1996

Equivalent citations: (1998)8SCC534, AIRONLINE 1996 SC 1264

Bench: A.M. Ahmadi, Sujata V. Manohar, B.N. Kirpal

ORDER

1. Notice was issued in the present case on the limited question whether the alleged non-compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter called "the Act", was fatal to the prosecution. This question arises in the backdrop of the following facts:

The petitioner, a Nigerian national, was leaving India on 23-6-1987 by Air India Flight No. AI-860 from Delhi to Lagos via Bombay. He had reported for customs clearance at the Air India counter at the Indira Gandhi International Airport, New Delhi. A team of the Narcotics Control Bureau present at the airport suspected the petitioner and decided to check his baggage. The petitioner was first asked if he was carrying any narcotics or other contraband goods and on his refusal, his luggage was searched. At the point of time when the actual search took place, he was carrying two handbags but nothing incriminating was found therefrom. He had, however, booked one bag which had already been checked in and was loaded in the aircraft by which he was supposed to travel. This bag was called to the customs counter at the airport for examination. On examination, it was found that it contained 153 cartons of tetanus vaccine. On being opened, it was noticed that 152 cartons contained ampoules whereas the remaining one carton carried polythene packet containing brown-colored powder packed with black adhesive tape. It weighed about 180 grams and since it was suspected to be heroin, it was seized under a panchnama. The suspected contraband article was divided into three parts and one part was sent for scientific examination which revealed that it contained heroin. After the usual tests, the charge was laid against the petitioner and the trial court, after examining the evidence on record, found the petitioner guilty under Sections 21 and 23 read with Section 28 of the Act and convicted him thereunder. On appeal, the main contention urged by his counsel was that the prosecution had failed to establish that the baggage containing the incriminating articles belonged to him and that the prosecution had violated the mandate of Sections 50 and 57 of the Act. However, at the stage of issuance of notice on this special leave petition, the question was confined to the non-compliance of Section 50 of the Act only. We have to consider the question whether there has been a violation of Section 50 of the Act in the aforesaid background.

2. Two things become crystal clear, (i) that at the relevant point of time, the bag from which the incriminating articles were found was not in the actual possession of the petitioner when he was

searched at the airport, and (ii) the prosecution does not contend that it had informed him that he had a choice of being examined in the presence of a Gazetted Officer or a Magistrate. Therefore, if, in the facts and circumstances of the case, it is not found that Section 50 was attracted, then there is no dispute that the prosecution had omitted to inform the petitioner of his right to opt for being examined by a Gazetted Officer of any department or the nearest Magistrate. Sub-sections (1) and (2) of Section 50 provide as under:

"50. (I) When any officer duly 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.

(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. On a plain reading of Sub-section (1) of Section 50, it is obvious that it applies to cases of search of any person and not search of any article in the sense that the article is at a distant place from where the offender is actually searched. This position becomes clear when we refer to Sub-section (4) of Section 50 which in terms says that no female shall be searched by anyone excepting a female. This would, in effect, mean that when the person of the accused is being searched, the law requires that if that person happens to be a female, the search shall be carried out only by a female. Such a restriction would not be necessary for searching the goods of a female which are lying at a distant place at the time of search. It is another matter that the said article is brought from the place where it is lying to the place where the search takes place but that cannot alter the position in law that the said article was not being carried by the accused on his or her person when apprehended. We must hasten to clarify that if that person is carrying a handbag or the like and the incriminating article is found therefrom, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act. However, when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that it was not found on the accused person. So, on the facts of this case, it is difficult to hold that Section 50 stood attracted and non-compliance with that provision was fatal to the prosecution case.

4. Counsel drew our attention to a few decisions of this Court to point out that in some cases this Court had invoked the provision of Section 50 of the Act where incriminating articles were found from an almirah or any other place within the room where he or she was found but we think that those cases turned on their own facts. We do not think that in the special facts of this case where the bag containing the incriminating article, though belonging to the petitioner, was out of his reach after it was checked in and was nowhere near the place where he was apprehended and searched although it was called for from the aircraft luggage compartment and brought to the customs counter for examination. Therefore, the question of compliance with Section 50 does not arise. The High Court was, therefore, right in the view that it took.

5. In the result, this petition fails and is dismissed.

6. Writ Petition (Crl) No. D16529 of 1995 is permitted to be withdrawn and will stand disposed of accordingly.