

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.1899 OF 2016
WITH
CRIMINAL WRIT PETITION NO.1900 OF 2016
WITH
CRIMINAL WRIT PETITION NO.1901 OF 2016
WITH
CRIMINAL WRIT PETITION NO.1902 OF 2016**

Rakesh Chitkara & Anr.

.. Petitioners

V/s.

Union of India & Ors.

.. Respondents

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Mr. Kevic Setalvad, Senior Advocate, Mr. Jehaan Mehta a/w. Mr. Dheeraj Nair, Mr. Pratik Pawar and Ms. Shanaya Cyrus Irani i/b. M/s. J. Sagar Associates, Advocate for the Petitioners.

Ms. Rati B. Amroliya, Advocate for Respondent No.1.

Mrs. G.P. Mulekar, APP for Respondent – State.

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**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : SEPTEMBER 1, 2016.

P.C. :

Petitioners have questioned notices dated 10th May, 2016 and 25th May, 2016 issued by Narcotics Control Bureau, Kolkata, West Bengal under Section 67 of the NDPS Act. Learned

senior counsel appearing for the petitioners submits that under a licence issued on 2nd May, 1995 by the Government of India, Directorate General of Health Services (Exhibit - B3), petitioner no.2 is manufacturing and marketing formulation namely "Phensedyl Linctus" having the following revised composition:

"Each 5 ml. contains:

Chlorpheniramine Maleate I.P.- 4 mg.

Codeine Phosphate I.P. - 10 mg."

Learned counsel referred to the communication made by Drug Controller General of India dated 26th October, 2005 (Exhibit - F) and a communication of March 2009 (Exhibit - G). Learned counsel for the petitioners submits that the petitioner no.2 is manufacturing Phensedyl Cough Syrup using Codeine Phosphate to its prescribed limit. The Petitioners apprehend arrest at the hands of respondents. Manufacturing of cough syrup is taken place in the State of Himachal Pradesh, while registered office is located at Mumbai. The syrup is distributed throughout the country. Learned counsel submits that petitioners have raised several issues questioning the issuance of notices under Section 67 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "The NDPS Act") .

2 Learned counsel appearing for the Union of India submits that respondents have found huge quantity of the cough syrup in Kolkata and at the railway station in Kolkata. During inquiry it revealed that a sizable stock of seized goods were not manufactured by petitioners. This issue is still looked into and inquired into by respondents.

3 Learned counsel for Union of India submits that no cause of action arose in Mumbai for petitioners to prefer the present petition in Mumbai. Learned counsel raised issues concerning territorial jurisdiction of this Court. The said objection was raised even at the time of first hearing of the petition before the Vacation Court on 30th May, 2016. Learned counsel submitted that taking into consideration seriousness of the issue, respondents have already initiated necessary inquiry and accordingly notices were issued to the petitioners. On behalf of petitioners reply was filed. Learned counsel for Union of India expressed satisfaction on the cooperation extended so far by petitioners during inquiry/investigation. Learned counsel appearing for the Union of India submitted that the petitioners have efficacious remedy under the Cr.P.C. in case they apprehend arrest.

4 We have perused the available record. We have perused notices issued which is subject matter of the petition.

5 In view of the submissions advanced before us, we may not deal with the issue of maintainability of the impugned notices. We allow respondents to continue inquiry/investigation in accordance with law.

6 It was submitted that though manufacturing of the cough syrup takes place in the State of Himachal Pradesh, their registered office is located in Mumbai, therefore, petitioners preferred petition in this Court with an apprehension that they would be arrested by respondents. Learned senior counsel appearing for petitioners assured that petitioners will co-operate with respondents in respect of the subject inquiry/investigation which is being conducted in respect of the subject notices.

7 Learned senior counsel appearing for the petitioners submitted that some protection be granted to the Directors, agents and employees of the petitioner no.2 - Company as they have serious apprehension of arrest at the hands of respondents at any time.

8 In the facts, we pass the following order:

:: ORDER ::

- (i) In case respondents decide to arrest petitioner no.1 and the Director or employees of petitioner no.2 in connection with C.R. Nos. 7 of 2016, 8 of 2016, 14 of 2016 and 15 of 2016 then a prior 72 hours notice in writing shall be served on them;
- (ii) By keeping all issues on merits open, petitions stand disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)