

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-42768-2013 (O&M)
Date of Decision: 04.07.2016**

Perdipt Chaudhary & Anr.

. . . . Petitioners

VS.

State of Punjab & Ors.

. . . . Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. RS Cheema, Senior Advocate with
Mr. Arshdeep Singh Cheema, Advocate for the petitioners

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Hanspal S Virk, AAG Punjab

Ms. Ranjana Shahi, Sr.Panel Counsel, UOI

Mr. Vishal Garg, Addl. AG Haryana

Mr. Sumeet Goel, Advocate for CBI

SURYA KANT, J.

(1) In this petition under Section 482 CrPC, the petitioners seek transfer of investigation of case bearing FIR No.173 dated 18.09.2013 under Sections 22, 61 & 85 of the NDPS Act, 1985 registered at Police Station Shambhu, District Patiala, to Central Bureau of Investigation or any other independent agency outside the jurisdiction of State of Punjab.

(2) Before advertng to the grounds taken in support of the prayer, a brief reference to the facts is necessitated.

(3) **Petitioners' case:** The petitioners are son and father, respectively.

The first petitioner is the proprietor of a pharmaceutical industry named as M/s

Pioneer Laboratories having its factory premises at Rishi Nagar, outside Jundla Gate, Sector 16, Karnal. The firm was set up in the year 1999 deal in the manufacturing of medicines, for which the firm was granted licence by the State Drug Controllers, Haryana valid till 31.12.2016. The firm has been allocated quota of narcotic drugs/controlled substances by Central Bureau of Narcotics (in short, 'the CBN') valid upto 31.12.2013. The licence granted to the firm is valid for manufacturing biological and non-biological drugs. The firm has also been permitted to manufacture Medicinal and Toilet Preparations containing alcohol, opium, Indian hemp and other narcotic drugs subject to compliance of the conditions contained in Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The narcotic drugs allotted to the firm by the Narcotic Commissioner include (i) Diphenoxylate HCL; (ii) Dextropropoxyphene HCL; (iii) Codeine Phosphate.

(4) The firm has followed meticulously the mandatory conditions *re*: possession of narcotic drugs not exceeding the prescribed limit. It has always maintained a complete record for the purchase, consumption or return of the controlled substances and has been sending quarterly reports to the CBN (P-11 colly). As on 07.10.2013, the stock register and the physical verification depicted that the firm had following stocks:-

(i)	Dextropropoxyphene HCL	-	Nil
(ii)	Diphenoxylate HCL	-	120.063 kgs
(iii)	Codeine Phosphate	-	65.040 kgs

(5) Two persons, Karan Singh and Sahab Singh are alleged to have visited the residence of the first petitioner on 05.10.2013 in their Swift car and demanded Rs.1.0 crore and further threatened that if the amount was not paid the

conducted at his factory premises. These two persons also “*disclosed that the said amount is being demanded on the asking of respondents No.3 and 4*”. The first petitioner refused to oblige the visitors.

(6) Respondents No.2 to 4 i.e. (i) SHO Police, Station Shambu, Patiala (Punjab), (ii) Bhupinder Singh Khatra, Superintendent of Police, Rajpura Range, District Patiala, (Punjab); and (iii) Bikramjit Singh Brar, SHO, PS Banur, District Patiala (Punjab) are alleged to have reached the residence of the petitioners on 07.10.2013 at about 12.30 p.m. along with a force of 40-60 Punjab Police officials and enquired about them from the mother of first petitioner. As both of them were out of station, the police team enquired about the location of the factory premises, whereupon, petitioners’ driver Balbir Singh was sent in their Innova car bearing Regd. No.HR-45A-1499. Respondent No.3&4 also boarded that Innova and reached the factory premises at about 1.00 p.m. They did not inform the local police at Karnal. They started misbehaving with the staff especially the ladies who were kept under lock and key in the factory. The driver of the petitioners immediately informed about this incident to the mother of first petitioner (and wife of petitioner No.2) who is an Advocate. She informed the President of District Bar Association, Karnal and reached the factory premises accompanied by 5-6 Advocates. The search of the factory was carried out in the presence of the mother of first petitioner and other Advocates but no incriminating material was found. The store was also checked and the raw material was weighed and was tallied with the entries in the stock register. Copies of all the relevant documents including licences and authorization for storage of narcotic drugs were handed over. The police party, however, did not release the employees until they agreed to sign on the blank papers. The Drug Inspector, Karnal was also not informed about any

raid or search being conducted in the factory premises. The entire episode was videographed.

(7) Respondents No.3&4 informed the mother of the first petitioner that the search was being conducted due to registration of FIR No.173 dated 18.09.2013 under Sections 22,61,85 of the NDPS Act registered at PS Shambhu, District Patiala (P12).

(8) Respondents No.3&4 and most of the other police officials left the factory premises at about 8.30 p.m. on 07.10.2013, leaving 6-7 police officials in the premises on the pretext that they will again come on the following day at 10.30 a.m.

(9) The petitioners came to know on 08.10.2013 that respondents No.2 to 4 and other police officials again visited the factory premises at late night and after breaking open the locks collected the licensed drugs lying in the factory premises, besides documents, stock registers, raw material, accounts books, computers and their Innova car and went back to Punjab.

(10) The wife of petitioner No.2, namely, the mother of the first petitioner gave a complaint to SHO, PS City Karnal on 08.10.2013. Later-on the petitioners came to know that while leaving Karnal, the Punjab Police party had made a DDR entry at PS City Karnal regarding their arrival and departure.

(11) The petitioners have further averred that though nothing illegal was found or recovered from the factory premises on 07.10.2013 yet respondent No.4 prepared an inventory memo after two days on 09.10.2013 in which some recoveries allegedly made from one Rakesh Kumar and Parveen Kumar were also reflected. A false recovery of 1080 capsules without make and 450 capsules of make Privon Spas was also shown. The raid was patently illegal as no search

(12) As soon as the news regarding raid and search of factory premises was reported in media, the officers of State Drug Controller Department visited the factory premises on 12.10.2013 which was found closed and locked. The Inspection Team sealed the manufacturing unit and served the first petitioner with a show cause notice to give particulars of the persons from whom the drugs or raw materials were acquired which was seized by Punjab Police. Finally, the Senior Drugs Controller, Karnal, after recording statements etc., opened the seal and the factory premises was searched during which 30 kg of Diphenoxylate HCL stocked in the raw material store was found. The proprietor was directed not to use that raw material without intimation to the authorities; the factory was de-sealed and the possession was handed over to the petitioners.

(13) Meanwhile, on the complaints made by the mother of first petitioner, FIR No.985 dated 28.11.2013 under Section 384, 386, 387, 388, 389, 502, 420 IPC was registered at Police Station Karnal against Karan Singh and Sahab Singh as meanwhile they again visited the residence of petitioners on 28.11.2013 and demanded Rs.1 crore on behalf of respondents No.3&4.

(14) In this factual backdrop, the petitioners seek transfer of investigation of FIR No.173 dated 18.09.2013 under Sections 22, 61 & 85 of the NDPS Act, 1985 registered at Police Station Shambhu, District Patiala to CBI or any other independent agency outside the State of Punjab, on various grounds which have been elaborated in later part of this order.

(15) **Respondents' version:** Punjab Police (Respondents No.1 to 4) have denied the petitioners' allegations. In their reply-affidavit dated 24.03.2014, it is explained that FIR No.173 dated 18.09.2013 was registered on the basis of a secret information and subsequently offences under Section 18-C, 27-B(2) & 27-D of

Anil Kumar Chhabra r/o Karnal was arrested on 18.09.2013 in the area of Village Mehmampur after he had crossed the barrier on National Highway i.e. when he was in the territory of State of Punjab. He was allegedly waiting for his brother Nitin Chhabra and their two associates, namely, Amandeep and Rachpal Singh and was carrying the intoxicant tablets and capsules in a plastic bag for onward supply to Krishna Medical Store, Pindi Street, Ludhiana which was being run by his brother Nitin Chhabra. 10,00,000 tablets of Microlit and 48000 capsules of maroon colour without any make were recovered from the possession of Anil Kumar Chhabra, who further disclosed that his brother Nitin Chhabra and others were involved in the sale and purchase of narcotic and psychotropic substances. On the basis of his disclosure statement, Parveen Kumar, Rakesh Kumar, Gaurav Budhiraja, Ashok Kumar and Sanjay Puri of Delhi were nominated. Their arrest warrants were obtained from the Judicial Magistrate on 02.10.2013 and three of them were arrested. 2300 bottles of Fencydrill, 2,52,000 capsules of Spasmosip Plus and 12000 capsules of Parvon Forte (all banned drugs) were recovered from Rakesh Kumar. Almost equal amount quantity was recovered from Parveen Kumar and partly from Kamal Rai. Rakesh Kumar during his custodial interrogation disclosed various names which included both the petitioners who were in the sale and purchase of narcotic drugs and synthetic drugs.

(16) It is further averred that the maroon coloured capsules filled with synthetic drugs without any make were being manufactured by the petitioners in their pharmaceutical unit M/s Pioneer Laboratories, Karnal and 48,000 such capsules sent from their factory for sale in Punjab were recovered from Anil Kumar. In view of the disclosure statement of Rakesh Kumar, the petitioners were nominated as accused in the above-stated FIR and an application was moved on

factory premises. Similarly, arrest warrants were also applied and obtained. Thereafter only, the members of Special Investigation Team conducted raid on the factory premises. The SIT duly informed the local police of Police Station City Karnal about conducting the raid. In fact, Superintendent of Police, Rajpura who was the Supervisory Officer of SIT team personally informed the Superintendent of Police, Karnal about the raid at the factory premises and sought police assistance. A DDR entry was duly recorded in the Police Station at Karnal. The Drug Inspector, Karnal was also asked to join the raid through SHO PS City Karnal which fact he has admitted in his reply dated 12.02.2014. The first petitioner was also informed about the raid through his uncle Ram Kumar Kalyan and was asked to join the search either in person or through any of his relative or employee (R3). Raid was conducted on 07.10.2013 after 11.30 a.m. and carried out till sunset and also on 08.10.2013 during the day.

(17) It is further alleged that during the search of factory premises five bags of flapper Plastic Parvon Spas, two bags of flapper Parvon Spas, one bag of Dexovon flapper, two bags of flapper Parmodex, seven plastic bags containing maroon coloured capsules each weighing 10kg., 'Codeine Phosphate' powder contained in separate boxes weighing 65kg., 'Diphenoxylate Hydrochloride' powder lying in different boxes weighing 90kg, one plastic bag containing 10kg intoxicant powder (Mixture Powder) without make, one bag containing 15kg intoxicant powder (Mixture Powder) which is in burnt condition and one vehicle, Innova, bearing registration No.HR-45-A-1499 from which 1100 maroon coloured capsules without make and 470 capsule of Parvon spas were recovered. The chemical report of the above said recoveries has been received from Forensic Science Laboratory. The photocopy of chemical report is attached herewith as

Annexure R-4. Hence, the total recovery made from the factory premises and the Innova car of the petitioners is as follows:-

Sr.No.	Recovery	Quantity	Result after chemical analysis
1.	Codeine Phosphate powder	65 kg	Codeine Phosphate
2.	Diphenoxylate hydrochloride powder	90 kg	Diphenoxylate hydrochloride
3.	Intoxicant Powder (mixture powder)	10 kg	Dextropropoxyphene hydrochloride
4.	Intoxicant Powder (mixture powder) (burnt condition)	15 kg	Diphenoxylate hydrochloride
5.	Intoxicant Capsules Maroon colour without make (recovery from Innova)	1100	Dextropropoxyphene hydrochloride
6.	Capsules Privon Spas (From Innova)	470	Dextropropoxyphene hydrochloride

(18) The Punjab Police has further averred that the entire proceedings of the raid conducted were duly videographed by them. The petitioners are said to have burnt the illicit drug to avoid detection by the SIT and that part has also been duly videographed. It is claimed that the videography further substantiates that personnel from Karnal police, staff of the petitioners, certain local lawyers, Sarvshri Ram Kumar Kalyan and Lalit Kumar both maternal uncles of the petitioners, were also present in the factory premises at the time of search operations.

(19) According to Punjab Police, the samples of the drugs collected from the premises of petitioners' factory were sent to Forensic Science Laboratory and as per its report dated 04.03.2014, the narcotic drugs recovered from the premises fall within the ambit of the NDPS Act, hence the petitioners have been rightly implicated. It is maintained that the petitioners misused their licence for running the pharmaceutical unit into smuggling the synthetic drugs. Since the petitioners

did not join the investigation, it is also averred that they were declared proclaimed offenders on 24.03.2014.

(20) It has also been averred that though the sale or possession of Dextropropoxyphene Hydrochloride salt had been suspended by Government of India vide Gazette Notification dated 23.05.2013 but as per FSL report, 10kg of that contraband was found present in the factory premises at the time of search conducted on 08.10.2013. The capsules recovered from the vehicle are also found to be of the same salt even though the record maintained in the factory shows the availability of that salt as Nil in the stock register. In addition, 15kg burnt powder is also alleged to have been recovered from the factory premises which was burnt deliberately, may be under the fear of raid by the police. The FSL report certifies that the said burnt powder is Diphenoxylate HCL.

(21) The allegations of extortion of Rs.1 crore from the petitioners have been refuted. It is maintained that the petitioners have adopted all types of pressure building tactics including registration of false cases against members of SIT at Karnal. It has also been disclosed that after getting FSL report, challan was presented on 10.03.2014. The prayer for transferring the investigation, thus, has been opposed.

(22) The Drug Controlling Authorities of Haryana State (respondents No.5&6) have filed their reply through Padam Singh Rathee, Senior Drugs Control Officer at Karnal, primarily explaining their own conduct and the follow up action taken after the search operations were carried out on 07/08.10.2013. It is explained that the pharmaceutical unit of the petitioners had a valid licence till 31.12.2011 and it had applied for further renewal from 01.01.2012 to 31.12.2016 and its application is still under-consideration of the Department. It is further averred that

since the petitioners have failed to submit their reply to the show cause notice

served after the raid was conducted by Punjab Police, the firm has been directed to stop production till further orders.

(23) The Central Bureau of Investigation (respondent No.8) has also filed a short reply, *inter alia*, maintaining that “*the case is primarily local in nature and does not have any such transnational ramifications so as to warrant investigation by CBI*”. It is further averred that “*Local State Police is well equipped and has trained investigating officers to investigate such cases. The State police with vast resources at its command can investigate the case under supervision of senior officers of known repute...*”. It is also averred that the case does not fall within the basic guidelines laid down by the Hon’ble Supreme Court in **State of West Bengal vs. Committee for Protection of Democratic Rights (2010) 3 SCC 571**. Lastly, it is averred that “*CBI is already over-burdened by cases being investigated by it, inter alia, on the directions of Hon’ble Supreme Court as also Hon’ble High Courts*”.

(24) The Central Bureau of Narcotics – respondent No.7 too has filed its reply/affidavit admitting the fact that the petitioners’ firm had a valid licence to possess Dextropropoxyphene HCL (800 kg at a time), Diphenoxylate HCL (200kg at a time) and Codeine Phosphate (100 kg at a time) and that the firm has been regularly submitting its quarterly returns.

(25) The petitioners have filed additional affidavits dated 20.03.2014 (along with documents Annexure P24 to P29), followed by order dated 24.04.2014 (P30) and copy of challan dated 05.03.2014 (P31). They have also brought on record additional facts through application dated 22.08.2015 along with documents Annexure P32 to P36. In the first affidavit, the petitioners have relied upon the inquiry report dated 09.01.2014 of Haryana Police along with legal opinion of District Attorney dated 10.01.2014 which were given pursuant to the complaints

(26) The Superintendent of Police, Karnal in his short reply-affidavit dated 05.04.2014 referred to the final fact finding enquiry/investigation made on the allegations leveled by the mother of first petitioner against the members of Punjab Police raiding party. As per para 5 of the affidavit, the inquiry was conducted by Deputy Superintendent of Police (HQ), Karnal on 05.04.2014 who reached at the conclusion that “no criminal cognizable offence is made out. The said inquiry report has also been placed on record by the Punjab Police (R6)”.

The genesis of the subject FIR and other drug cases in the State of Punjab

(27) The menace of narco-invasion in the State of Punjab has been of grave concern for all and one. This Court initiated *suo motu* proceedings in public interest in CWP No.20359 of 2013 primarily for better and improved coordination amongst all stake-holders so as to control this epidemic through renewed efforts. The concern shown by this Court led the Punjab Police to register various cases against the drug mafia, drug lords, peddlars, suppliers and most importantly the so far untouched and uncharted territory of pharmaceutical industries who were statedly involved in manufacturing and supply of synthetic drugs in the national and international market, for which the controlled substances allocated to them under valid licences were being misused. In the year 2013 alone, the Punjab Police claims to have recovered 3,23,056 injections and 30,652,590 capsules and pills which were meant to target the street drug peddling. The synthetic drug Methamphetamine (ICE) worth hundreds of crores of rupees besides heroine, foreign currency and millions of Indian rupees were recovered from different groups of drug mafia. It is also a matter of record that Pindi Street in Ludhiana which is ostensibly a whole sale market of manufactured drugs, is indeed the hidden heaven for stockists and suppliers of illicit drugs.

(28) FIR No.173 dated 18.09.2013 also refers to *in extenso* as to how Anil Kumar Chhabra, a resident of Karnal, whose brother Nitin Chhabra runs a medical store named as Krishna Medical Store in Pindi Street, Ludhiana, spilled the beans and disclosed during interrogation as to how the drug racketeers were operating. The huge quantity of capsules, syrup bottles and tablets etc. could not have been possibly planted by the police. In fact, Anil Kumar Chhabra, whose brother is statedly absconding and is a proclaimed offender, did not make any such allegations. The recoveries said to have been effected from Anil Chhabra or Rakesh Kumar would not have concerned the petitioners but for the further revelation that the maroon colour capsules filled with the synthetic drug, without any make, allegedly originated from their pharmaceutical unit.

(29) We have heard Sh. RS Cheema, Senior Advocate and Ms. Reeta Kohli, Senior Advocate – Addl. AG Punjab on behalf of the contesting parties at a considerable length and gone through the relevant record with their assistance.

PETITIONERS' CONTENTION

(30) Questioning the very domainial competence of Punjab Police and accusing it for blatant transgression of its territorial jurisdiction, Sh. Cheema urged that:-

- (i) petitioner No.1 has been nominated as an accused on the premise that Rakesh Kumar and Parveen Kumar have, during the course of their interrogation, stated that maroon colour capsules are manufactured in the factory premise of M/s Pioneer Laboratories. Such an allegation could at best, enable the Punjab Police to collect evidence on the point as to whether the contraband seized in Punjab had been supplied by the petitioners through the accused in Punjab State. There is not an iota of evidence to this effect. On the other hand, any contraband

lying in the factory premises at Karnal confers no jurisdiction on the Punjab Police either to seize such material or to treat it as the case property in the FIR in question. Such contraband will be the subject matter of a separate and independent case which could be registered by the competent investigating agency at Karnal. Similarly, any contravention of the law by a licensed pharmaceutical industry, would fall within the jurisdiction of either the State Police or the investigating agency who has got inter-State jurisdiction. The Punjab Police, could under no circumstances, register a case or assume the power of investigating agency with regard to a contraband or manufactured drugs recovered at Karnal. Learned Senior counsel referred to Section 177 CrPC, according to which, every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed;

- (ii) if it had come to the notice of Punjab Police that a pharmaceutical concern who is duly licensed to deal in sanctioned manufactured drugs is contravening the law and is thus committing an offence within the meaning of Section 21 of the NDPS Act, it could only inform the investigating agency having jurisdiction of such fact and request such agency to register a case and investigate it. Since the jurisdiction of the Punjab Police in the instant case is confined to link the supply of maroon colour capsules seized from the accused in the FIR with the accused stationed at Karnal, the Punjab Police cannot go and raid a licensed pharmaceutical factory at Karnal and make recovery and seizures. Even in a case of chance recovery, the matter

has to be transferred to the investigating agency having territorial jurisdiction;

- (iii) while conducting the raid on the basis of search warrant issued by the Judicial Magistrate, Rajpura, the Punjab Police violated Rule 47 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 whereunder such a power like inspection of stocks can be exercised only by the Central Bureau of Narcotics;
- (iv) as per the report under Section 173 CrPC, the contraband drugs were allegedly being brought by the accused nominated in the FIR from Delhi and Karnal and the said material was allegedly manufactured and stored in Karnal. The prosecution case thus clearly suggests that the accused were operating on an inter-State basis. Since the allegation is that petitioner No.1 has been supplying contraband to the co-accused in Punjab State, it discloses an offence with inter-State linkages and ramifications. The appropriate agency having expertise in investigating such like cases is the one which can have a pan-India jurisdiction, namely, the Central Bureau of Narcotics;
- (v) there is a flagrant violation of mandatory statutory requirements by the Punjab Police team which conducted the search and seizure in the factory premises. The 'search warrant' (R1) purportedly signed by Judicial Magistrate, Rajpura on 05.10.2013 is highly suspicious as it is prepared on a *pro forma* for 'warrant of arrest'. The printed words 'Warrants of Arrest' have been scored out and in their place the words 'Search Warrant of Factory' have been substituted without any initial. Reference is made to the challan (P37) to contradict the police version as the Court is said to have issued only arrest warrants which were

tampered with and converted into 'search warrants' or a 'warrant of search', by excluding 'warrant of arrest'. Further the 'search warrant' was issued in the name of 'Prime House' which is a separate concern and is different than that of M/s Pioneer Laboratories. No entry has been made in the DDR of local Police Station i.e. PS City Karnal for the completion of so-called search and seizure. There is thus wholesome violation of Sections 78, 79, 93, 99 & 100(4) of CrPC;

- (vi) the search and seizure in the factory premises was carried out in a totally non-transparent manner and the records have been manipulated or forged during the course of investigation. It is mentioned in the DDR (R2) that ASI Rampal of Haryana Police was associated but there is not a single document or recovery memo signed by that police official from PS City Karnal. No intimation was sent to the Drug Controlling Authorities before or at the time of raid. Similarly, the records have been forged to suggest that the raid was conducted on 07.10.2013 till sunset or it continued on 08.10.2013 during the day time also. The fact of the matter is that the entire Punjab Police team went back to Punjab on 07.10.2013 and it crossed the Toll Plaza situated at Nilokheri, Karnal along with Innova car HR-45A-1499 at about 23.06 and 23.07 hours and they further crossed Shambhu barrier in the area of Punjab State at about 00:31 and 00:39 hours on 08.10.2013. Thus there arises no question of any further search or seizure and the records in this regard have been manipulated to justify the inordinate delay in submission of inventory before the Area Magistrate at Rajpura on 09.10.2013;

- (vii) petitioner No.2 has been falsely implicated as an afterthought to justify the illegal retention of his Innova vehicle. It was contended that no recovery of any contraband was shown from the Innova in the inventory submitted before the Area Magistrate at Rajpura on 09.10.2013 but subsequently such a recovery was planted to falsely implicate petitioner No.2 as the vehicle is registered in his name;
- (viii) the enquiry report dated 09.01.2014 of Haryana Police falsifies the claim of Punjab Police as according to this report, no official from the local police was asked to join in the raid; the vehicles of Punjab Police and the Innova car of petitioner No.2 left Haryana having crossed the Toll Plaza at Nilokheri and then at Shambhu border as per the timings already mentioned in sub-para (vi); no information at any stage was sent to the Drug Controlling Authorities at Karnal; no public witness was joined; the claim that factory premises was again visited on 08.10.2013 is false; Innova car was never produced nor mentioned before the Magistrate as a case property and that Haryana Police has registered a case wherein the allegations pertaining to demand of gratification by the accused nominated in that FIR “on behalf of the Punjab Police officials...” are made;
- (ix) the challan dated 27.07.2015 (P37) does not disclose any legal evidence against the petitioners as it simply thrives on their alleged confessions. The investigating agency in fact has been trying to strike a deal with the petitioners and it is so evident from the statements of a number of witnesses which are appended with the challan. However, when the petitioners refused to be blackmailed, they were implicated in yet another false case registered at Ludhiana.

(31) Sh. Cheema learned senior counsel for the petitioners relied upon the Constitution Bench judgment in **State of West Bengal and Others** (supra) to urge that the petitioners have a fundamental right to seek fair investigation and in view of the cited authoritative pronouncement, this Court is fully empowered to transfer the investigation to CBI or any other independent agency. He cited **Rubabbuddin Sheikh vs. State of Gujarat & Ors., (2010) 2 SCC 200** to contend that Court can entrust investigation of the case to CBI even after filing of charge-sheet against the accused by State police in order to do complete justice. A pointed reference was made to **State of Punjab vs. Central Bureau of Investigation and Others (2011) 9 SCC 182**, reiterating that High Court can direct fresh investigation by some independent agency, notwithstanding the fact that charge-sheet has already been filed as the provisions in CrPC like 173(8) cannot limit or affect inherent powers of High Court to make orders like fresh investigation or re-investigation as may be necessary to secure the ends of justice. To the same effect is the *ratio* of **Nirmal Singh Kahlon vs. State of Punjab & Ors., (2009) 1 SCC 441**.

(32) Sh. Cheema relied upon **Navinchandra N. Majithia vs. State of Maharashtra, (2000) 7 SCC 640** where, on a combined interpretation of Article 226 and Sections 177 & 178 CrPC, it is held that the territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered is the place where the alleged offence was committed. In **Rajendra Ramchandra Kavalekar vs. State of Maharashtra & Anr. (2009) 11 SCC 286**, the Apex Court reiterated the principles laid down in **Majithia's** case (supra) and further explained that the territorial jurisdiction of a Court with regard to criminal offence would be decided on the basis of the place of occurrence of the incidence and not on the basis of where the complaint was filed and “*the mere fact that FIR was registered*

arisen even partly within the territorial limits of jurisdiction of another Court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or the charge-sheet”.

(33) Learned Additional AG Punjab, on the other hand, countered the petitioners' claim and raised a preliminary objection on their *locus standi* to seek transfer of investigation as they have since been declared proclaimed offenders on 24.04.2014. She pointed out that though this Court by an order dated 19.05.2014 granted extraordinary concession to enable the petitioners to surrender before the trial court and furnish the bail bonds whereupon they were to be admitted to interim bail, they did not honour that interim order also. Ms. Kohli referred to the facts contained in the FIR and the subsequent report under Section 173 CrPC to explain as to how a huge quantity of illicit drugs manufactured in the factory premises of the petitioners had been supplied by them through their agents in the State of Punjab, a part whereof was recovered from Anil Kumar Chhabra and their other associates. She argued that –

- a) as soon as the names of petitioners were unraveled as the bulk suppliers of contraband drugs, Prosecution applied for issuance of search warrant of factory premises. Learned Judicial Magistrate, Rajpura by way of judicial order that 05.10.2013 allowed that application and issued the search warrant. Similarly, another application was moved for issuance of warrant of arrest against Divya Gupta and petitioner No.1 on the ground that they are co-accused in the case. That application too was allowed vide a separate judicial order and warrant of arrest was issued on 05.10.2013. Certified copies of both the orders have been brought on record;

- b) the search of factory premises was made in the presence of not only the officials of Haryana Police but also the mother of petitioner No.1 who is an Advocate as well as some members of the Karnal Bar. All these facts can be substantiated from the videography got prepared by Punjab Police of the search and seizure operations. Some of the still photographs referred to during the course of hearing also testify the same;
- c) the first petitioner was duly informed about the search warrant of his factory premise through his uncle Ram Kumar Kalyan and was asked to join the proceedings either in person or through any of his relatives or employees. His two maternal uncles including Ram Kumar Kalyan remained present when search was conducted;
- d) there is no manipulation or forgery of record as the so-called cutting of printed material and insertion of hand written words, in 'search warrant' or 'warrant of arrest' is a ministerial exercise done by the Court staff in compliance to the judicial orders passed by the Judicial Magistrate, Rajpura on 05.10.2013. These documents are duly authenticated by the learned Judicial Magistrate;
- e) a considerable part of the 'offence' has been committed within the territory of Punjab State. Even if manufacturing of illicit drugs took place in State of Haryana, the sale of contraband drugs by the petitioners through their henchmen in the territory of Punjab State, does empower the Punjab Police to nominate the petitioners as co-accused and prosecute them;
- f) the half-baked preliminary enquiry report of Haryana Police was never accepted by the higher Police authorities. The affidavit filed by

Superintendent of Police, Karnal along with the final enquiry report leaves no room to doubt that the insinuations made by the trained mind of the mother of petitioner No.1 against members of Punjab Police were found totally false, baseless and no cognizable offence has been found to have been committed by them;

- g) the NDPS Act, 1985 is a Special Law and in view of the powers conferred under Section 41 of the Act, the learned Judicial Magistrate, Rajpura was very much competent to issue warrant for the arrest or for the search of factory premises when he had reason to believe that any narcotic drug or psychotropic substance had been kept or concealed by such person and/or at such place. This power is not limited to the territorial jurisdiction of the learned Magistrate;
- h) similarly, Section 178(b)(c)&(d) CrPC unequivocally confer jurisdiction on Punjab Police as a part of the offence was certainly committed within the State of Punjab. The sale of every singular contraband within the State of Punjab is a continuing offence consisting of several acts done in different local areas including the areas of States of Punjab & Haryana;
- i) there are series of invoices recovered by Punjab Police mostly of Kamal Goods (cargo carrier) to establish beyond any doubt that a huge stock of illicit drugs was sent by the Consignor (Chaudhary Pharma) from Karnal to M/s Goel Sales Corporation at Ludhiana. The Consignee-firm is owned by one Pawan Goel and his son Nitin Goel who are notorious drug lords and are involved in multiple cases under the NDPS Act (some of these invoices have been brought on record as well);

- j) the story regarding taking away of Innova car of petitioner No.2 from their residence is totally false as the wife of petitioner No.2 (an Advocate) herself made a statement on 07.01.2015 that “my husband owns Innova Car No.HR-45A-1499, who cannot drive himself and was lying parked in the factory since long...”. Similar was the version of son-in-law of petitioner No.2;
- k) the allegation that the petitioners were falsely implicated because they refused to give extortion of Rs.1 crore demanded by Karan Singh and Sahab Singh on behalf of officials of Punjab Police, is a blatant lie and the story has been concocted in connivance with Ram Kumar Kalyan – one of the maternal uncle of petitioner No.1, who himself is of a shoddy character and is a convict under Section 302 IPC. There are at least three other criminal cases including one in the State of Rajasthan, registered against him. The call details of Mobile No. of Ram Kumar Kalyan (9416300008) reveal that it was he who first made a call to Karan Singh – a notorious gangster who has been recently killed in an encounter by Haryana Police.
- (34) Learned State counsel relied upon a decision of this Court dated 07.10.2015 in **CWP No.88 of 2014 (Jagjit Singh Chahal vs. State of Punjab & Ors.)** and other connected cases wherein also the prayer was made for the transfer of investigation to CBI or other independent agency of some of the cases registered under the NDPS Act by Punjab Police during its special drive in the year 2013. This Court after giving detailed reasons declined to transfer the investigation to any outside agency but constituted a Special Investigation Team of three IPS Officers in the rank of Inspector Generals of Police, who incidentally have no roots

in the State of Punjab. It was urged that all the contentions raised in the instant case have been effectively answered by this Court in the cited decision.

(35) We have given our thoughtful consideration to the contentious issues raised from both sides and have gone through the relevant material and documents on record.

(36) The doubt, if any, regarding power of the High Court to direct CBI or any other independent agency to investigate a cognizable offence without the consent of the State Government has been set at rest by the Constitution Bench in **State of West Bengal & Ors.** (supra). Such an extraordinary power, nonetheless, has to be exercised sparingly, cautiously and in exceptional situations so as to provide credibility and instill confidence in investigation or where the incident may have national or international ramifications or when such order is needed for doing complete justice and enforcing the fundamental rights. The legitimate invocation of such power in a case where the accusations are against a person who by virtue of his high office could influence the ongoing investigation and cause prejudice to the victim, or in a case of police inaction or atrocities when it becomes necessary to ensure fair investigation, is well recognized through a catena of decisions.

(37) Equally apt is to remind ourselves that where re-investigation is sought largely on the basis of affidavits or statements or complaints which amounts to taking the defence into consideration at the threshold of the trial or when there is not an iota of proof to suggest a malice or motive, especially after the charge-sheet has been filed in a competent court, it may not be prudent to entrust the case to a different agency. [See (i) **Jude Chidibere & Ors.vs. NCB 2013 (7) RCR (Crl) 2881**; (ii) **Disha vs. State of Gujarat & Ors. (2011) 13 SCC 337**; and (iii) **Sudipta Lenka vs. State of Odisha & Ors. (2014) 11 SCC 527...**]

(38) The pre-eminent plea taken by the petitioners revolves around the question of territorial jurisdiction of Punjab Police in conducting search and seizure in their factory located at Karnal (Haryana). A somewhat similar argument was raised by the proprietors of pharmaceutical units located in the State of Himachal Pradesh and who were also accused of supplying synthetic drugs in the State of Punjab, in **Jagjit Singh Chahal's** case (supra) but that argument was turned down by this Court holding as follows:-

“(160) Similarly, the objection against the jurisdictional competence of Punjab Police in registering cases against proprietors of pharmaceutical units located in State of Himachal Pradesh prima facie cannot be entertained at this stage. If the trails of the crime originating from those units were traced out in the Punjab territory also, it would be totally farcical to contend that Punjab Police cannot step in or take action against the suspects.”

(39) The above observations were made by this Court in the context of Section 21 of the NDPS Act which says that whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells...transports,...exports inter-State, is liable to be punished in terms of clauses (a), (b) & (c). The expression “to export inter-State” has been defined in Section 2(xxvii) of the Act to mean “to take out of a State or Union Territory in India to another State or Union Territory in India”. Since the investigating agency is relying upon a bulk of documentary evidence comprising invoices to claim that the petitioners are guilty of supplying contraband or synthetic drugs through goods carrier agencies from Karnal to Ludhiana besides

sale of such illicit drugs within the territory of Punjab, it is difficult to accept the petitioners' contention at this stage that the Punjab Police has got no territorial jurisdiction to nominate them as accused in the subject FIR. Once they are nominated as accused, the power of Judicial Magistrate to issue warrant and authorization under Sections 41 & 42 of the Act cannot possibly be curtailed even by the provisions of CrPC, in view of Section 51 of the NDPS Act, according to which the provisions of CrPC are to apply "in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures under this Act".

(40) Even if a case under NDPS Act has inter-State ramifications, there may arise no legal necessity to entrust investigation to a third agency unless the State agencies are going in opposite directions to run each other down. That is not the case here as after thorough investigation, the Haryana Police has rejected the version put forth by the mother of petitioner No.1, who appears to be an Advocate with a fairly long standing at the Bar.

(41) While it shall be within the exclusive domain of the trial court to accept or discard the Punjab Police version but the photographs and some of the documents on record do suggest that Haryana Police was present during the search and seizure operations. The stand taken by Punjab Police that the search and seizure operations have been got videographed, sufficiently allay the apprehension of the petitioners at this stage as the evidence of videography would be critically analysed by the trial court at the appropriate stage.

(42) Similarly, the allegations of cuttings, overwriting etc. in the 'search warrants' or 'warrants of arrest' do not carry much convincing force in view of the judicial orders passed by the Magistrate on 05.10.2013 save that the petitioners are

able to prove by leading impeccable evidence that any cuttings or overwritings were made by Punjab Police officials in derogation of judicial orders.

(43) This Court cannot be oblivious of the fact that there are serious accusations against pharmaceutical industries for misusing the controlled substances allocated to them under the statutory rules/orders notified under the NDPS Act. Such wholesome misuse could not have possibly taken place except in collusion and connivance of the Drug Controlling Authorities, be that may of Himachal Pradesh or the Drug Controlling Authority posted at Karnal. We hope that their complicity would also be seriously investigated to break this nexus.

(44) The petitioners' over-exerted version unfortunately does not inspire any confidence. Admittedly, the first lady of the family who is an Advocate reached the factory premises along with 6-7 local Advocates of Karnal and search and seizure operations were apparently carried out in their presence on 07.10.2013 (even if such exercise on 08.10.2013 is disputed). She chose to make her first complaint (P15) exactly after 10 days on 17.10.2013. Even that complaint made after due deliberations has been finally disbelieved. Ram Kumar Kalyan – a close relative of petitioners and a person of questionable integrity was present during search operations. If the version of Punjab Police that it was Ram Kumar Kalyan who firstly gave a call to a notorious gangster has any grain of truth, it is a sufficient indicator as to how the business of illicit drugs might have been promoted and protected.

(45) Still further, if there is any violation or deviation from the mandatory procedure by the Punjab Police, the petitioners are well within their right to take such plea(s) before the trial court at an appropriate stage.

(46) For the reasons afore-stated, we do not find it a fit case for the transfer

the fact that this Court has already constituted SIT comprising three senior IPS Officers in **Jagjit Singh Chahal & Ors.** case (supra) for identifying the missing links, lack of proof or evidence which could be credible but has not been collected or made part of the record, we direct the said SIT to re-examine the subject FIR – case also along with the report under Section 173 CrPC be presented therein, in accordance with the same parameters as have been laid down by this Court in the cited decision. The SIT will complete its exercise within one month from the date of receipt of certified copy of this order. While the trial shall continue, it may not be concluded till the SIT submits its own viewpoint, if any, which might have some bearing on the merits of the case.

(Surya Kant)
Judge

04.07.2016
vishal shonkar

(A.B. Chaudhari)
Judge

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