IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2018

DELIVERED ON : 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.Nos.1259 & 1398 of 2016
and
Crl.M.P.Nos.11336 and 12222 of 2016

M.Ranjith Kumar ... Petitioner in Crl.RC.1259/16

J.Mohamed Manzur ... Petitioner in Crl.RC.1398/16

Vs

State Rep. by
The Intelligence Officer,
Narcotics Control Bureau,
Besant Nagar, Chennai. ... Respondent in both Crl.R.C.s
(NCB F.No.48/1/12/2011-NCB-MDS)

Common Prayer: Criminal Revision Cases filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned Special Judge, I Additional Special Court for the NDPS Act at Chennai in Crl.M.P.Nos.2625 and 2624 of 2013 in C.C.No.15 of 2012 dated 15.09.2016 by allowing this revision petition.

For Petitioners : Mr.B.Kumar, Senior Counsel
for Mr.P.Ezhilnilavan
in Crl.R.C.No.1259 of 2016

Mr.S.Saravana Kumar,
in Crl.R.C.No.1398 of 2016

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for NCB cases
in both the Crl.R.C.s

COMMON ORDER

These criminal revisions were filed against the dismissal of discharge petitions filed by the Petitioner/accused Nos.5 and 6 in Crl.M.P.Nos.2625 of 2013 and 2624 of 2013 in C.C.No.15 of 2012 dated 15.09.2016 by the Learned 1st Additional Special Judge for NDPS Act Chennai.

2.Brief case of the Petitioner/Accused No.5 in Crl.R.C.No.1259 of 2016:

The Revision Petitioner is the Proprietor of M/s.Reliable Pharma at Chennai and he is a sole super stockiest fort Zenlabs India for the state of Tamil Nadu. The firm was registered under Drugs and Cosmetics Act and the petitioner is running the business from 2004. From 2008 to 2011 the petitioner used to do business with one M/s.Sri Sarguru Agencies of Villupuram and during that period he sold 40 varies of tablets in which three varieties of tablets are containing Psychotropic Substances.

3.A1 Shankar contacted him in 2008 and stated that he is a retailer of medicines and Sarguru Agencies are duly licenced to carry on the business in medicines as retailers. The person calling over the phone had introduced himself as Manager of Sarguru Agencies and also gave a drug licence number 537/20B and 502/21B. He wanted the supplies to be sent to his address at Villupuram promising to pay the consideration by cheque. The petitioner believed his representation and the business was continued till 20.07.2011. Now only the prosecution says that M/s.Sri Sarguru Agencies did not possess any drug licence and cheated the petitioner by giving a fabricated Drug License number.

4.The Learned Counsel for the revision petitioner submits that the learned judge failed to see that it is a case of no evidence against the petitioner. The statement of the first accused C.Shankar @ Sekar is not liable to be looked into or taken into consideration since he had died and he is not tried jointly with the petitioner. Hence section 30 of the Indian Evidence Act has no application. In the search made in the residence of A1, certain returned covers alone were seized and they did not contain any medicine allegedly supplied by the petitioner to M/s.Sri Sarguru Agencies.

5.The Learned Counsel for the revision petitioner submits that the learned Judge failed to see that the statement of the petitioner is also exculpatory and that he had not admitted any offence under NDPS Act.

6.The Learned Counsel for the revision petitioner submits that the learned Judge failed to see that supplying medicines to M/s.Sri Sarguru Agencies who had earlier forwarded a letter that they are dealers in medicine shows that the petitioner had innocently dealt with the said M/s.Sri Sarguru Agencies.

7.The Learned Counsel for the revision petitioner submits that the learned Judge failed to see that it was not possible even if the petitioner had taken every precaution to have found out if the said M/s.Sri Sarguru Agencies were not duly authorized dealers under Drugs and Cosmetics Act.

8.The Learned Counsel for the revision petitioner submits that the learned Judge failed to see that the issue is not whether the medicine supplied by the petitioner is a medicine which also contains psychotropic substance dealt with under NDPS Act but the issue is whether he supplied the medicines. Thus on the very basis of the prosecution case, the petitioner has no case and therefore he ought to have been discharged from the case.

9.Brief case of the Petitioner/Accused No.6 in Crl R.C.No 1398 of 2016

This criminal revision is filed against the dismissal of discharge petition filed by the Petitioner/Accused No.6 namely Mohamed Manzur, in Crl.M.P.No.2624 of 2016 in C.C.No.15 of 2012 dated 15.09.2016 by the First Additional Special Judge for NDPS Act cases at Chennai.

10.The Learned Counsel for the Revision Petitioner contends that the learned Trial Judge gave finding that the exact quantity will be known only at the time of trial and not at the time of framing charge, if it is so how the charge can be frame under section 22(b) of NDPS Act and the same has been proved that there is no sufficient materials to frame charge under section 22(b) of NDPS Act, 1985.

11.The Learned Counsel for the Revision Petitioner contends that the trial Court failed to see that the alleged transaction said to have taken place from the year 2006, but the petitioner sold the alleged ATIVAN Tablets to A1 Shankar @ Sekar only from 23.07.2011 to 05.09.2011 for only two months and further there is no material would show that the petitioner is in possession of lesser than commercial quantity but greater than small quantity.

12.The Learned Counsel for the Revision Petitioner contends that the learned trial Court failed to see that the petitioner is having licence to sell the tablets and the only allegation against the petitioner is that without verifying the licence of A1 and without medical prescription, the petitioner has sold Atrivan Tablets to A1 but in contra A1 is having business in the name and style of M/s.Sri Sarguru Agencies and with fake drug licence and drug licence number purchased psychotropic medicines from various Paramedical companies.

13.The Learned Counsel for the Revision Petitioner contends that the learned Trial Court failed to see that, the Investigating Officer has not recovered any Ativan Tablets from the petitioner's premises and during his confession statement, the alleged bills have been recovered from the petitioner through in which the prosecution has fixed the entity. Except the alleged bills no evidence is available on the side of the prosecution.

14.The Learned Counsel for the Revision Petitioner contends that the learned Trial Court failed to see that, the petitioner is having valid licence to deal with psychotropic substance and even assuming the petitioner has violated the provisions the same has not been a ground to b ring him under section 8(c) of NDPS Act.

15.The Learned Counsel for the Revision Petitioner contends that the learned Trial Court failed to see that, the petitioner has not violated the Rules 58 and 63 of NDPS Rules 1985 and all the drug items are mentioned in Schedule B and H of Drug and Cosmetics Rules and re used only for medical purposes. Hence no offence under section 8(c) of NDS Act is made out.

16.The Learned Counsel for the Revision Petitioner contends that the learned Trial Court failed to see that, there is no material available on the side of the Prosecution to prove that the petitioner committed offences punishable under sections 22 (b) and 28 of NDPS Act 1985.

17.The Learned Counsel for the Revision Petitioner contends that the learned Trial Court failed to see that, except the confession statement the prosecution has not produced any valid material to prove the case against this petitioner and even in the alleged confession, there is no material would show that the petitioner has committed the offence under section 22(b) of NDPS Act.

18.The Learned counsel for the respondent submits that the petitioner without following the rules made under the act sold and supplied the drugs which is banned for export by that he committed the offence and the same was also admitted by this accused and other accused Hence, there is a prima facie case against the accused and the same will be proved at the time of trial. Hence, the petition for discharge is not maintainable and liable to dismissed. The complainant submits that the petitioner violated the Rules 58, 63 and 65-A of NDPS Act and the other points raised by the petitioner is without any merit and liable to be rejected as the grounds raised to discharge is matter of trial and to be proved in the trial and the grounds raised by the petitioner to discharge is without any merit.

19.The learned Senior Counsel for the petitioner in Crl.R.C.No.1259 of 2016, to fortify his case, placed reliance upon the following reported judgments:

a) State of Uttaranchal Vs Rajesh Kumar Guptaj in (2007) I S.C.C.355

b) D.Ramakrishnan Vs Intelligence Officer, AIR (2009) S.C.2404

and also the decisions of the Hon'ble Apex Court reported in (2014) 13 SCC Page 1, AIR 1990 SC Page No.962 and (2010) 4 SCC Page 450 in support of their above said submissions.

20.Brief case of the Respondent/complainant in both cases:-

Based on the intelligence input received from Narcotics Control Bureau and subsequent address verification, on 20.09.2011 NCB Officers had effected a seizure of huge quantity of capsules/tablets believed to be Psychotropic Substances at Speed Post Concentration Centre at St.Thomas Mount, Chennai on 21.09.2011.

21.As a follow up action, the residence of K.Sekar of Villupuram at 15A Vijayan Street, Ramakrishna Nagar, Salamedu, Villupuram-605602 was searched by the NCB Officers on 26.09.2011 along with two witnesses conducted the search of the premises under the provision of NDPS Act. During the search, the said

K.Sekar revealed his actual name as C.Shankar. During the search proceedings, the incriminating documents such as Fixed Deposit receipts, Bank Pass Books, land documents etc. were seized. 42 Speed Post parcels returned undelivered by the local post office and 3 numbers of cartons containing capsules and tables under various brand names, all believed to be Psychotropic Substances have been detained for detailed examination. During interaction with Shri C.Shankar @ Sekar, it came to light that he was sending the parcels containing Psychotropic substances as per the instructions of one Shri Alex, a Russian National, resident of Kattukuppam Villupuram District.

22.Thereafter, on 27.09.2011, the NCB Officers located the address of Shri Alex at Door No.153, Divankandappa Nagar, IIIrd Street, Periya Mudaliar Chavadi, Kattukuppam Post, Villupuram District searched the premises and seized incriminating articles such as PAN Card, Passport, Netbook (Laptop), Pen Drive, one Gold bar weighing 50 grams, 2 Mobile phones, Land and Bank documents, data retrieved from Pen Drive, etc. In response to the summons issued under section 67 of NDPS Act to Shri.C.Shankar @ Sekar and Shri Alexander Vyukhin @ Alex, both appeared before the Intelligence Officer, NCB at Chennai and inter-alia admitted their guilt in procuring, financing, exporting, attempt to commit offence and conspiracy in illicit trafficking of psychotropic substances to USA, UK, etc. in contravention of Section 8(c) r/w 22,23,37A 28 & 29 of NDPS Act and Rule 58 to 67 of NDPS Act. On the basis of their voluntary statements dated 27/28.09.2011 incriminating documents and psychotropic substances seized on 21.09.2011, 26.09.2011 and 27.09.2011, both the above said persons were placed under arrest at 10.00 hrs on 28.09.2011, On 01.10.2011, the 3 numbers of cardboard boxes and 42 Speed Post articles returned undelivered by the local post office, which were detained from the house of C.Shankar and brought to NCB Office were opened in the presence of 2 witnesses, when opened revealed 30 different brands of psychotropic substances in huge quantities, which were seized under NDPS Act.

23.During the follow up action taken by the complainant, Mr.K.Hemant Kumar, Proprietor of M/s.Munot Pharmaceuticals, Chennai, Mr.M.Ranjit Kumar, Proprietor, M/s Reliable Pharma, Chennai, Mr.S.Natarajan, Manager of M/s.Velan Pharmna, Madurai, and the petitioner Mr.J.Mohamed Manzur Proprietor M/s.J.J.Pharma, Villupuram, from whom psychotropic substances were purchased by C.Shankar were enquired. On summons, all these 4 persons appeared and have given their statements under section 67 of NDPS Act, wherein they have clearly stated that they have not followed rules regarding sale of psychotropic substances and that they have not asked for or obtained or seen the Drug License of C.Shankar representing M/s.Sarguru Agencies, Villupuram, an unauthorized person , to whom they had sold the psychotropic substances and admitted their guilt and thereby violated the provisions of NDPS Act 1985. On the basis of the voluntary statements of C.Shankar and the above said four persons statements dated 24.11.2011 given under section 67 of NDPS Act, incriminating documents regarding unlawful sale of psychotropic substances by them, all the 4 persons were placed under arrest on 24.11.2011.

24.The complaint submits that in the above case after investigation the complaint was filed and the same was taken on file and assigned C.C.No.15 of 2012. In the complaint it was categorically stated that the petitioner herein joined with other accused in criminal conspiracy and sold the contraband, export the contraband, violated the NDPS Act and rules.

25.The complaint submits that the Revision petitions were not maintainable as the offense committed by the petitioners will be proved in the time of trial through evidence. The petitioners without following the rules made under the act sold and supplied the drugs which are banned for export by that he committed the offence and the same was also admitted by this accused and other accused. Hence, there is a prima facie case against the petitioners and the same will be proved at the time of trial. Hence, the violation of the rules 58, 63 and 65-A of NDPS Act and the other points raised by the petitioners were without any merit and liable to be rejected as the grounds raised to discharge is matter of trial and liable to be dismissed.

26.I have heard Mr.B.Kumar, learned Senior Counsel for Mr.P.Ezhilnilavan, learned counsel appearing for the revision petitioner in Crl.R.C.No.1259 of 2016, Mr.S.Saravana Kumar, learned counsel for the revision petitioner in Crl.R.C.No.1398 of 2016 and Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent in both the Criminal Revision Cases and perused the entire records.

Discussions:

27.The case of the Complainant is that A1 to A7 including the Petitioner/Accused Nos.5 and 6 have contravened the provisions of Section 8(c) r/w Sections 22, 23, 25, 27A, 28 and 29 and Rule 58 of NDPS Rules 1985 punishable under sections 22, 23, 25, 27A, 28 and 29 of NDPS Rules 1985.

28.The main allegations against Petitioner/Accused Nos.5 and 6 is that they contravened the provisions of the NDPS Act and Rule 1985 as amended and conditions of grant of these drug licence and sold and caused an offence of export of psychotropic substances to various destinations outside India and thus A-5 and A-6 has committed offences contravening the provisions of Section 8(c) r/w section 22 and 28 and punishable under section 22(c) and 28 of the NDPS Act, 1985 as amended.

29.Admittedly, the petitioners had been charge-sheeted on the basis of statement made by co-accused, who has stated that the petitioners were also involved in the offence but nothing substantial has come on record to prove the same. Even in the final report filed under Section 173 of Cr.P.C., nothing concrete has come out to show the involvement of the present petitioners.

30.It has been held in various judgments of the Hon'ble Apex Court as well of this Court that in absence of any evidence except confession of co-accused, no interference or involvement of nominated accused can be drawn. It has also been held that the trial Court is not to act merely as a post office of the investigating agency but the Court is to apply its independent mind at the time of framing of charge. In Hari Charan Kurmi Vs. State of Bihar (AIR 1964 SC 1184), the Hon'ble Apex Court has held as under:-

> "Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the concession of guilt which the judicial mind is about to reach on the said other evidence.
>
> ......that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. It is now no more res integra that the confession by an accused is not a substantive piece of

evidence against the co-accused person in the same trial. For this, I place reliance on the law laid down by the Hon'ble Apex Court in the case of Kashmira Singh Vs. State of M.P. (AIR 1952 AC 159). The confession of an accused can only be used against the co-accused for leading assurance to any substantive evidence, if there by any, to be utilized or acted upon.

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible.

Now the next question is whether a prima facie case has been made out against the Petitioners. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the

Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

In the State of Bihar v. Ramesh Singh, 1978 (1) SCR 257 the Hon'ble Apex Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

In Union of India v. Prafulla Kumar Samal & Anr., 1979 (2) SCR 229, the Hon'ble Apex Court after considering the scope of section 227 observed that the words 'no sufficient ground for proceeding against the accused clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the Court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under:

"(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in

framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

Again in Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors., 1979 (4) SCC 274 the Hon'ble Apex Court observed in paragraph 18 of the Judgment as under:

"The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion rounded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence".

In Gopal Govind Chogale Vs. The Assistant Collector of Central Excise, Maharashtra (1985 Cri LR (Mah) 495) (Bom), it has been held that confessional statement of co-accused cannot be the foundation against other accused even for the purpose of framing of charge.

Similarly, Hon'ble the Apex Court in the case titled as Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, 2008 AIR (SC) 2991 in paras 14 and 15 has held that "sufficient grounds to proceed after the charge sheet is

> submitted is to be considered by the Judge, postulates the application of judicious mind and whether a case for trial has been made out by the prosecution. The judge has the power to shift the weight of the material for limited purpose of finding out whether or not a prima facie case against the accused has been made out".

> Similarly the Hon'ble Apex Court in the case of Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijja and others 1990 AIR (SC) page 1962 in para 6 has held that "if two views are equally possible and the judge is satisfied that evidence adduced before him while giving rise to some suspicion but not gave suspicion against the accused, he will be fully within his rights to discharge the accused."

Now this Court carefully considered the evidences placed on record in the complaint filed by the NCB and the above settled principles of the Hon’ble Apex Court in appreciating the Revisions filed by the Petitioners.

31.The learned Senior Counsel for the petitioners, substantially made, two legal submissions. The first submission is that the petitioners have not violated Rule 58 of the NDPS Rules, 1985 r/w Rule 63. Admittedly, the petitioner/accused No.5 is having a wholesale licence. Even from a perusal of the counter affidavit filed by the respondent, it is clear that, the allegation against the petitioner is that, he has not taken any efforts to verify the facts, while making periodical supply of drugs in the name of Sri Sarguru Agency and has not verified the authenticity of the licence, said to have been possessed by A-1. Therefore, the learned Senior Counsel would submit that in as much as, there is no violation of Rule 58 r/w 63 of the said Rules and the psychotropic substances supplied by the petitioner did not come under the purview of the Schedule appended to the Rules and hence he no case is made out. At best, he can be a witness in support of the case.

32.The second submission made by the learned Senior Counsel for the petitioner is that section 8(c) of NDPS Act does not have any application to the facts of the case on hand. The second part of section 8(c) specifically deals with the sale of psychotropic substances for medical or scientific purposes. Admittedly, in the case on hand the petitioner is a licencee of psychotropic substances. He has not violated the provisions of NDPS Act, 1985, Rules, or any order made thereunder. Even assuming without admitting that the petitioner has violated the conditions mentioned under the Drugs and Cosmetics Act, 1940, the same cannot be a valid ground to punish him under the NDPS Act. When the petitioner has made out a prima facie case, the rigour of section 17 of the Act, cannot be enforced against him.

33.Per contra, the learned Special Public Prosecutor for the respondent would vehemently contend that considering the gravity of the offence, the petitioners shall not be discharged. The United Nation Convention has taken serious note of the offence pertaining to the drugs and has issued specific guidelines. Since the petitioners violated the provisions of Drugs and Cosmetics Act, 1940, they are liable to be punished under the NDPS Act. Moreover, section 8(c) of the NDPS Act, authorizes such a course of action. As they sold the psychotropic substances to A-1, who in turn, exported the same to the other countries, section 8(c) of the NDPS Act would be attracted.

34.As submitted by the learned Senior Counsel for the petitioners, it is nobody's case that the petitioners have violated Rule 58 of the NDPS rules. The allegations leveled against the petitioners are that, they sold the psychotropic substances, without proper verification of the licence shown by A1. There is no dispute that the petitioner/accused No.5 has a wholesale license to deal with psychotropic substances. Even assuming that the petitioner has violated the provisions of the Drugs and Cosmetics Act, the same cannot be a ground to bring him under the rigour of section 8(c) of the NDPS Act. Prima facie, it is seen and also on a perusal of the counter affidavit filed by the respondent, the allegation against the petitioners are that, they have not verified the facts, regarding the license, while effecting the sale in favour of Accused No.1. It is further to be seen that the possession of psychotropic substances by the petitioners were only for medical purposes. It is also their case that they sold the psychotropic substances, believing that the same are required for the said purposes.

35.Thus prima facie, it appears that there is no substance to hold that knowingly, they sold the psychotropic substances in favour of A1. Further, this Court is of the view that provisions of the NDPS Act, cannot be pressed into service and it can only be construed to hold that, if an offence is made out under the provisions of the NDPS Act, notwithstanding the fact, that the said action is also an offence under the Drugs and Cosmetics Act, 1940, proper action can be taken under the earlier act. However, it cannot be construed to hold that for an offence said to have been committed under the Drugs and Cosmetics Act, 1940 the punishment can be imposed, provided, under the NDPS Act of course, the mater can be viewed differently, if the petitioners acted in collusion with A1 by making the sale to be used for illegal purposes. Therefore the NCB officers ought to have included the revision petitioners as witnesses in this case and not an accused since the mens rea is absent.

36.Moreover, it is nobody's case that the petitioners have violated any Rule or order, contemplated under the NDPS Act. Hence, a prima facie case has been made out by the petitioners that they have neither violated the provisions of NDPS Act, nor, any Rules, or orders, made thereunder.

37.Apart from the above discussions, this Court is of the opinion that the provisions of NDPS Act would not be attracted. In this connection, it would be necessary to reproduce the decision rendered by the Hon'ble Apex Court, in the case of (State of Uttarachal Vs. Rajesh Kumar Gupta) which is as follows:

> "In view of the fact that all the drugs, items 1,2,3,4,5,6 & 7, being allopathic drugs mentioned in Schedules G and H of the Drugs and Cosmetics Rules, indisputably, are used for Medicinal purposes. Once the drugs are said to be used for medicinal purposes, it cannot be denied that they are acknowledged to be the drugs which would come within the purview of the description of the expression"medical purposes.

38.In view of the facts and law position explained above, both the Criminal Revision Cases are allowed and the impugned orders passed in Crl.M.P.Nos.2625 of 2013 and 2624 of 2013 in C.C.No.15 of 2012 dated 15.09.2016 on the file of the Learned 1st Additional Special Judge for NDPS Act Chennai is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

To

1. The Special Judge,
   I Additional Special Court for
   the NDPS Act at Chennai.

2. The Intelligence Officer,
   Narcotics Control Bureau,
   Besant Nagar, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.P.Ezhilnilavan, Advocate SR.No.86505

+2cc to Mr.N.P.Kumar, Advocate SR.No.86329,86330

Crl.R.C.Nos.1259 & 1398 of 2016
and
Crl.M.P.Nos.11336 and 12222 of 2016

GMY(03/01/2019)