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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25.11.2020

Pronounced on: 11.12.2020

+ CRL.M.C. 1799/2020 & CRL.M.A. 12621/2020

ROHIT

..... Petitioner

Through Mr. Rajiv Mohan with Mr.
Abhimanyu Kampani, Mr. Swapnil
Krishna and Mr. Nishant Madan,
Adv.

versus

CENTRAL BUREAU OF NARCOTICS

..... Respondent

Through Mr. Satish Aggarwala, Sr. SPP with
Mr. Gagan Vaswani, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, petitioner has filed present petition under section 482 Cr.P.C. and prays as under:

- a. set aside of impugned order dated 09.07.2020 passed by learned MM (New Delhi), Patiala House Courts, Delhi in the case F.No.P&I/DDEL/SEIZURE/01/2020 for the offences punishable under section 8/21/22/28/29/30 of NDPS Act;*
- b. stay the operation of order dated 09.07.2020 or any proceedings*

emanating therefrom till disposal of the present petition.

2. The facts leading to the filing of this petition are as follows:

a. A specific information was received jointly by Sh.D.S. Singh Superintendent (Prev.) and Sh.Praveen Dhull, Inspector, Preventive Cell, Central Bureau of Narcotics on 14.01.2020 at 10:00 hrs. that M/s Moksh Meditech, Basement Floor, CW-252, Sanjay Gandhi Transport Nagar, New Delhi is about to deliver unlabelled Buprenorphine Injections and different type of Narcotics and Psychotropic Substance who used to sell these medicines.

b. The informer stressed that huge quantity of illegal medicines containing NDPS and unlabelled Buprenorphine can be recovered on search of primes. The said information was recorded in CBN-1 and intimated to Asstt. Narcotics Commissioner, Central Bureau of Narcotics, Gwalior. Accordingly, Sh.Praveen Dhull, Inspector was directed by the said D.S.Singh, Superintendent (Prev.) to constitute a preventive party and take necessary action immediately. The team of CBN officers was constituted and reached at Sanjay Gandhi Transport Nagar by a Government

vehicle No.HR 26 BN 2410 around 14:00 hrs. on 14.01.2020.

c. On reaching at Sanjay Gandhi Transport Nagar, Sh.Praveen called two public persons who were passing through and introduced himself and other team members had apprised them about the secret information received regarding illegal purchase and sale of NDPS medicines by a shop namely M/s Moksh Meditech and requested them to be present as independent witness during the search and other legal proceedings. Both of them gave oral consent and thereafter, the Preventive Team along with the independent witnesses reached at M/s Moksh Meditech, Basement. The proprietor of the same namely Rohit (petitioner herein) was found present. Praveen, Inspector informed the petitioner about the information received by the department and informed that the search is to be made accordingly. Also informed the petitioner that he has the right under section 50 of NDPS, that he may be searched before the Competent Gazetted Officer or Magistrate nearest available. Before the search proceedings, the above team members tendered their personal search to the petitioner in the presence of independent witnesses.

During the search, nothing incriminating was found from the officials. Therefore, that team along with the independent witnesses entered the shop, Sh. Praveen Dhull asked the petitioner to produce the document of the shop, accordingly, the petitioner produced Drug License in FORM-20B, DL-BAD-125546, Form 21-B DL-BAD-125547, GST registration No.GSTIN07BUJPK-5342, 1z8, some purchase bills and other documents.

d. In the presence of the petitioner, two independent witnesses, the search of M/s. Moksh Meditech was conducted as per law. During search, NDPS medicines were recovered from the shop, the detailed list of recovered NDPS medicines were prepared. Further, during search, a carton was found by the side of the chair on which petitioner was seating and on opening the same, several small boxes were found placed therein. These small boxes were found to contain the unlabelled ampoules, it was seen that the recovered ampoules contain water like transparent liquid, these 10-15 ampoules were found kept in small plastic zipper polythene, such 2-3 polythenes were kept inside each small box, there were 27 small boxed kept inside the room. Bupine injection was

written in the box with declaration as Buprenorphine, manufactured by Ms. Radiant Parenterals Ltd. on counting, all 27 boxes contained a total of 704 unlabelled injections of 2 ml each. Thereafter, the petitioner was arrested by the Control Bureau of Narcotics on 15.01.2020, for the alleged offences under sections 8/21/22/28/29/30 of NDPS Act.

e. During the course of investigation, the respondent filed an application under section 52A NDPS Act before learned MM for disposal of seized narcotic drugs and psychotropic substances. Accordingly, an order dated 09.07.2020 came to be passed against the petitioner who not even done anything wrong and has been made scapegoat in the original proceedings as the case property has been planted upon the petitioner.

f. Being aggrieved, the petitioner filed a revision petition against the impugned order dated 09.07.2020, however, learned ASJ/Spl. Judge, NDPS, Patiala House Courts, was pleased to dismiss the same vide order dated 02.09.2020.

3. Hence the present petition has been filed.
4. Mr.Rajiv Mohan, learned counsel appearing on behalf of petitioner

has submitted that as per Section 52 A (2) of NDPS Act, upon the seizure of contraband, the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 of NDPS, who shall prepare an inventory as stipulated in the said provisions and make an application to the Magistrate.

5. In the present case, it is alleged that the contraband has been searched from the business premise of M/s Moksh Meditech, CW-252, Basement Floor, Sanjay Gandhi Transport Nagar. Thereafter, the list of the recovered items, list of recovered documents, panchnama, drawing of the sample, sealing, seizure was made by Insp. Praveen Dhull who thereafter forwarded all these alleged recovered documents to D.S. Singh, Superintendent (Prev.), Preventive and Intelligence Cell, Central Bureau of Narcotics. Further, Insp. Manoj Narwal filed an application before Ld. CMM requesting for directions to SHO Hari Nagar to deposit the seized articles in Malkhana of PS Hari Nagar, whereby Ld CMM had allowed the said application vide order dated 15.01.2020. Thereafter Insp. Manoj Narwal who did not prepare the inventory of seized Narcotics Drugs only moved an application before the Ld. Metropolitan Magistrate under Sub-Section 2 of Section 52A of NDPS for disposal of the case property for which he was not empowered

under Section 52A and 53 of NDPS Act.

6. Further submitted that as per the mandate of Section 52A (2), only the officer in-charge of a police station or the officer who is empowered under Section 53 of NDPS Act can dispose of drugs under Section 52 A of NDPS Act. It is reiterated that Insp. Manoj Narwal is neither the officer in charge of a police station/SHO nor he is empowered under Section 53 of NDPS Act for disposal of drugs under Section 52A of NDPS Act. Further, Insp. Manoj Narwal is not the officer who prepared the alleged list of the recovered items, list of recovered documents, panchnama, or draws the sample, or seized the alleged drugs.

7. It is submitted that as per the Notification No. G.S.R. 339(E) dated 10.05.2007 of Ministry of Finance (Department of Revenue) not only stipulates that all the drugs and psychotropic substances have to be disposed of but also identifies the officer who shall initiate action for disposal and the procedure to be followed for such disposal. The directions contained in the Notification issued by the Ministry of Finance were not complied with. As per clause 3 and 4 of the Notification No. G.S.R. 339 (E) dated 10.05.2007 issued by the Ministry of Finance, which is to the following effect:

“3. Officers who can dispose of drugs: Any officer in-charge of a police station or any officer empowered

under section 53 of the Act can dispose of drugs under Section 52A of the Act.

4. Manner of Disposal: (1) Where any Narcotic drug or psychotropic substances has been seized and forwarded to the officer in-charge of the nearest police station or to the officer empowered under section 53 of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs or psychotropic substance as per Annexure 1 to this notification and apply to any Magistrate under sub-section 2 of 52(A) as per the Annexure 2 to this notification.

(2) After the Magistrate allows the application under sub-section 3 of Section 52 A, the officer mentioned in clause (1) above shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit the details of the—drug consignment to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal. The office shall send a copy of the details along with the drug consignment to the officer-in charge of the godown.”

8. As per para 4 of the Notification No. G.S.R. 38(E) dated 16.01.2015, in suppression of the earlier Notification G.S.R. 339(E) dated 10.05.2007 inter-alia provides that officer in charge of the police station shall within 30 days from the date of the receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52(A)(2) in terms of Annexure 2 to the said notification. Sub Para (2) of Para 4 that after the Magistrate allows the application under sub-

section (3) of Section 52A, the officer mentioned in sub-para (1) of Para 4 shall preserve the certified inventory, photographs and samples drawn in the presence of Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee in the question of Disposal.

9. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of ***Union of India vs. Mohanlal & Anrs.: (2016) 3 SCC 379***, wherein the Hon'ble Supreme Court has held as under:

“19. There are two other aspects that need to be noted at this stage. The first is that notification dated 16th January, 2015 does not in terms supersede Standing Order No. 1/89 insofar as the said Standing Order also prescribes the procedure to be followed for disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Specific overriding of the earlier Standing Order would have avoided a certain amount of confusion which is evident on account of simultaneous presence of Standing Order No. 1/89 and notification dated 16th January, 2015. For instance in para (1) of Standing Order No. 1/89 only certain narcotic drugs and psychotropic substances enumerated therein could be disposed of while notification dated 16th January, 2015 provides for disposal of all Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Again in terms of Standing Order No. 1/89 the procedure for making of application was marginally different from the one stipulated in Notification dated 16th January, 2015 not only insofar as the procedure related to the officers who could make the application is concerned but also in relation to the procedure that the

DDC would follow while directing disposal. In both the notifications are prescribed the limits upto which the disposal could be directed. In case of excess quantity the disposal under the Standing Order No. 1/89 had to be done in the presence of the head of the Department whereas according to notification of 2015 in the event of excess quantity or value the disposal has to be by a high level Drug Disposal Committee to be constituted by the head of the Department. Again while Standing Order No. 1/89 specifically required the approval of the Court for disposal, notification dated 16th January, 2015 does not stipulate such approval as a specific condition. Be that as it may, to the extent the subsequent notification prescribes a different procedure, we treat the earlier notification/Standing Order No. 1/89 to have been superseded. In order to avoid any confusion arising out of the continued presence of two notifications on the same subject we make it clear that disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances shall be carried out in the following manner till such time the Government prescribes a different procedure for the same:

Cases where the trial is concluded and proceedings in appeal/revision have all concluded finally:

In cases that stood finally concluded at the trial, appeal, revision and further appeals, if any, before 29th May, 1989 the continued storage of drugs and Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is of no consequence not only because of the considerable lapse of time since the conclusion of the proceedings but also because the process of certification and disposal after verification and testing may be an idle formality. We say so because even if upon verification and further testing of the seized contraband in such already concluded cases it is found that the same is either replaced, stolen or pilferaged, it will be difficult if not impossible to fix the responsibility for such theft,

replacement or pilferage at this distant point in time. That apart, the storage facility available with the States, in whatever satisfactory or unsatisfactory conditions the same exist, are reported to be over-flowing with seized contraband goods. It would, therefore, be just and proper to direct that the Drugs Disposal Committees of the States and the Central agencies shall take stock of all such seized contrabands and take steps for their disposal without any further verification, testing or sampling whatsoever. The concerned heads of the Department shall personally supervise the process of destruction of drugs so identified for disposal. To the extent the seized Drugs and Narcotic Substances continue to choke the storage facilities and tempt the unscrupulous to indulge in pilferage and theft for sale or circulation in the market, the disposal of the stocks will reduce the hazards that go with their continued storage and availability in the market.

Drugs that are seized after May, 1989 and where the trial and appeal and revision have also been finally disposed of:

In this category of cases while the seizure may have taken place after the introduction of Section 52A in the Statute book the non-disposal of the drugs over a long period of time would also make it difficult to identify individuals who are responsible for pilferage, theft, replacement or such other mischief in connection with such seized contraband. The requirement of para 5.5 of standing order No. 1/89 for such drugs to be disposed of after getting the same tested will also be an exercise in futility and impractical at this distant point in time. Since the trials stand concluded and so also the proceedings in appeal, Revision etc. insistence upon sending the sample from such drugs for testing before the same are disposed of will be a fruitless exercise which can be dispensed with having regard to the totality of the circumstances and the conditions prevalent in the maalkhanas and the so called

godowns and storage facilities. The DDCs shall accordingly take stock of all such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances in relation to which the trial of the accused persons has finally concluded and the proceedings have attained finality at all levels in the judicial hierarchy. The DDCs shall then take steps to have such stock also destroyed under the direct supervision of the head of the Department concerned.

(3) cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme Court:

In such cases the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16th January, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time.

20. To sum up we direct as under:

No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order."

10. Mr. Mohan submitted that in the present case neither the Seizure, panchnama, list of document, list of recovered items was prepared at the spot and the same were brought to the office of CBN at Janakpuri by a tempo, where the list of the recovered items, recovered documents and the panchnama was prepared by Insp. Praveen Dhull which is again contrary to the Standing Instruction 1/88 dated 15.03.1988 of Narcotic Control Bureau (for short "NCB"), Delhi and Standing Order No. 1/89 dated 13.07.1989 of Government of India, Ministry of Finance (Department of Revenue). Further, Insp Manoj Narwal who did not prepared the inventory of the Seized drugs is neither an officer incharge of Police Station / SHO nor he is empowered under Section 53 of the NDPS Act nor he is the officer who prepared the alleged list of the recovered items, list of recovered documents, panchnama, or draws the sample, or seized the alleged drugs can dispose of drugs or move an application before the Magistrate for the disposal of drugs as defined under sub-section (2) of Section 52 A of NDPS Act.

11. Therefore, in these circumstances the procedure adopted by the CBN officials for drawing of samples neither conforms the procedure prescribed neither under Section 52A of NDPS Act nor under the Standing Orders. Further, Insp. Manoj Nawral who filed the application for disposal of drugs

under sub-section (2) of Section 52 A NDPS Act is not an officer in-charge / SHO or an officer empowered under Section 53 of the Act nor he is the officer who prepared the alleged list of the recovered items, list of recovered documents, panchnama, or draws the sample, or seized the alleged drugs can dispose of drugs has also not confirms the procedure prescribed neither under sub-section 2 of Section 52A of NDPS Act nor under the Notification dated 10.05.2007 and 16.01.2015 of Ministry of Finance (Department of Revenue), Government of India.

12. On the other hand, Mr.Satish Aggarwal, learned Senior Standing counsel appearing on behalf of respondent has submitted that the officers of CBN have not violated the provisions of law and if there is violation of any statutory guidelines, as alleged, the effect thereof will be seen at the appropriate stage during the trial. The application was rightly submitted as per provisions of Section 52A of NDPS Act. for certification of inventory and drawl of representative samples to constitute primary evidence for the purpose of trial. Further submitted that investigating officer cannot conduct investigation in a tainted and biased manner. It is true that investigation must be fair, transparent and judicious. In the present case, the investigation was conducted in a fair, transparent and judicious manner. Shri Manoj Narwal

was empowered under the Act to move the application under section 52A of NDPS Act, 1985. The said officer is of the rank of Inspector and he is duly empowered under section 53 of the NDPS Act and vide S.O.823(E) dated 14.11.1985 issued in Gazette of India. Accordingly, he had moved an application in exercise of his power conferred upon him under section 53 of the Act.

13. Mr. Aggarwal submitted that the appellant has referred notification meant for disposal of seized NDPS and not for the impugned certification purposes. That too, the referred notification has already been superseded vide GSR38(E) dated 16.01.2015 published in Gazette of India. Therefore, the judgments cited by the petitioner do not apply to the facts and circumstances of the present matter. The petitioner cannot travel beyond his Revision Petition filed in the Sessions Court. It is reiterated that the petitioner cannot be allowed to go beyond the scope of application under Section 52A of NDPS Act. It is further reiterated that while dealing with an application under Section 52A of NDPS Act, the Magistrate does not hold the trial and is not supposed to go into the merits and demerits of the case. The Magistrate has only to certify the correctness of the panchnama with reference to the articles/goods produced before it. Therefore, the present

petition is not maintainable and is liable to be dismissed.

14. I have heard learned counsel for the parties and perused the material available on record.

15. Case of the respondent is that a specific information was received jointly by Sh.D.S. Singh Superintendent (Prev.) and Sh.Praveen Dhull, Inspector, on 14.01.2020 at 10:00 hrs. that M/s Moksh Meditech, Basement Floor, CW-252, Sanjay Gandhi Transport Nagar, New Delhi is about to deliver unlabelled Buprenorphine Injections and different type of Narcotics and Psychotropic Substance who used to sell these medicines. The said substance can be recovered on search of premises. The said information was recorded in CBN-1 and intimated to Asstt. Narcotics Commissioner, Central Bureau of Narcotics, Gwalior. Thereafter, Sh.Praveen Dhull, Inspector was directed by the said D.S.Singh, Superintendent (Prev.) to constitute a preventive party and search the petitioner and premises as well. However, nothing incriminating recovered from the petitioner but recovered the substance covered under NDPS Act. Thus, Insp.Praveen Dhull prepared a list of the recovered items, list of recovered documents, panchnama, drawing of the sample, sealing, seizure who thereafter forwarded all these alleged recovered documents to D.S. Singh, Superintendent (Prev.).

16. Thereafter, Insp. Manoj Narwal filed an application before Ld. CMM requesting for directions to SHO Hari Nagar to deposit the seized articles in Malkhana of PS Hari Nagar. The said application was allowed vide order dated 15.01.2020.

17. The grievance of the petitioner is that abovenamed Insp. Manoj Narwal who did not prepare the inventory of seized Narcotics Drugs only moved an application under Sub-Section 2 of Section 52A of NDPS for disposal of the case property for which he was not empowered under Section 52A and 53 of NDPS Act.

18. As per Section 52A (2), only the officer in-charge of a police station or the officer who is empowered under Section 53 of NDPS Act can dispose of drugs under Section 52 A of NDPS Act. Insp Manoj Narwal is neither an officer incharge of Police Station / SHO nor he is empowered under Section 53 of the NDPS Act. Moreover, the said Insp. is not an officer who prepared the alleged list of the recovered items, list of recovered documents, panchnama, or draws the sample, or seized the alleged drugs.

19. It is pertinent to mention here that as per para 4 of the Notification No. G.S.R. 38(E) dated 16.01.2015, in suppression of the earlier Notification G.S.R. 339(E) dated 10.05.2007 inter-alia provides that officer in charge of

the police station shall within 30 days from the date of the receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52(A)(2) in terms of Annexure 2 to the said notification. Sub Para (2) of Para 4 that after the Magistrate allows the application under sub-section (3) of Section 52A, the officer mentioned in sub-para (1) of Para 4 shall preserve the certified inventory, photographs and samples drawn in the presence of Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee in the question of Disposal.

20. In the case of *Mohanlal (supra)*, it is held that in both the notifications are prescribed the limits upto which the disposal could be directed. In case of excess quantity the disposal under the Standing Order No. 1/89 had to be done in the presence of the head of the Department whereas according to notification of 2015 in the event of excess quantity or value the disposal has to be by a high level Drug Disposal Committee to be constituted by the head of the Department. Again while Standing Order No. 1/89 specifically required the approval of the Court for disposal, notification dated 16th January, 2015 does not stipulate such approval as a specific

condition. Be that as it may, to the extent the subsequent notification prescribes a different procedure, accordingly, held that earlier notification/ Standing Order No. 1/89 to have been superseded. In order to avoid any confusion arising out of the continued presence of two notifications on the same subject we make it clear that disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances shall be carried out till such time the Government prescribes a different procedure for the same.

21. Further held that the cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Hon'ble Supreme Court. In such cases the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16th January, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time.

22. Accordingly, directed no sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police

station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A.

23. As per the prosecution case, Insp. Praveen Dhull prepared a list of recovered articles, documents, Panchnama, etc. but not by Insp. Manoj Narawal, thus, the said Manoj Narawal is neither officer incharge of the police station nor empowered under section 53A of NDPS Act who can dispose of the drugs or nor move an application before the Magistrate for disposal of drugs as defined under sub-section 2 of section 52A of NDPS Act. Moreover, the said application was moved contrary to the notification dated 10.05.2007 and 16.01.2015 of Ministry of Finance (Department of Revenue), Government of India.

24. In view of above facts, provisions of Act and notification, I am of the considered opinion that orders passed by learned Magistrate and learned ASJ/Special Judge, NDPS, New Delhi are bad in law, thus, deserves to be set aside.

25. Accordingly, order dated 09.07.2020 passed by learned Magistrate and order dated 02.09.2020 passed by learned ASJ are hereby set aside.

26. The petition is accordingly, allowed and disposed of.
27. Pending application also stands disposed of.
28. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 11, 2020
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