IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7379-2022 (O&M)
Date of decision: 04.04.2022

Ashish Kumar and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. V.S. Virk, Advocate
for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

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ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.178 dated 29.04.2021 under Sections 18(A), 18(C), 27(b)(ii), 28 of the Drugs and Cosmetics Act, 1940 (for short 'DC Act'), Sections 3 & 7 of the Essential Commodities Act (for short 'EC Act') and Sections 420, 467, 468, 471 of the Indian Penal Code (for short 'IPC'), registered at Police Station Sector 29, District Panipat and all the subsequent proceedings arising therefrom, including the report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.').

While issuing notice of motion, following order was passed by this Court on 22.02.2022: -

"...Learned senior counsel submits that as per allegations in the

FIR, SI Jaiveer Singh received an information that one boy namely Himanshu @ Gola i.e. petitioner No. 2 is in possession of Remdesivir injection, which is used for treating COVID-19 and he is trying to sell the same in black market for Rs. 30,000/- per injection and he is coming in a car and if a raid is conducted, he can be apprehended. On this, an information was sent to Drug Inspector and a barrier was laid and 10 Remdesivir injections 100 mg were recovered. Thereafter, the present FIR was registered and the recovery memo was signed by the Drug Inspector. Later on, during investigation, he named one Pardeep as the person from whom he had purchased the said injections and petitioner No. 1 Ashish Kumar facilitated the same.

Learned senior counsel further argues that as per Section 32 of the Drugs and Cosmetics Act, no cognizance can be taken by the Court, except on complaint filed by the competent authority under the Act, therefore, the report under Section 173 Cr.P.C. is not legally valid.

Learned senior counsel has relied upon a judgment rendered by Hon'ble Supreme Court in ***2020 SCC Online SC 683, Union of India vs. Ashok Kumar Sharma****, wherein a similar view has been taken.*

It is next argued that since the Drugs and Cosmetics Act has special enactment, therefore, addition of Sections 420, 467, *468 and 471 of the IPC is an abuse of process of law as there is no allegation of cheating of preparation of any fake bill or spurious medicine.*

Learned senior counsel has referred to Section 17(B) of the Drugs and Cosmetics Act to submit that no offence under Section 18(A) is made out as it is not a case set up by the prosecution that petitioner No. 2 did not disclose that from where he purchased the said drugs and even no offence under Sections 18(C), 27(b)(ii) is made out as mere possession of the drugs is not an offence as there is no allegation that petitioner No. 2 was found selling or exhibiting for sale of the said drugs.

It is further argued that even no offence under Section of the Essential Commodities Act is made out as neither the said SI was authorized to investigate the case nor there is any notification to declare that Remdesivir injection was notified to be a prohibited drug under the Essential Commodities Act."

Learned senior counsel for the petitioners has argued that from bare perusal of the FIR, no offence is made out, therefore, impugned report under Section 173 (2) Cr.P.C. is also not legally sustainable. He has referred to Section 32 of DC Act, which reads as under: -

"32. Cognizance of offences. —

(1) No prosecution under this Chapter shall be instituted except by—

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State

Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

It is further argued that since only an Inspector or a Gazetted Officer of the Central Govt. or State Govt., duly authorized in writing by the concerned Govt., can institute a complaint for initiation of the prosecution, therefore, the impugned FIR is liable to be quashed. It is also submitted that the Court could not take cognizance of the matter on the basis of report under Section 173 Cr.P.C. submitted by the police, as the entire proceedings initiated against the petitioners are illegal and abuse of process of law. A reliance is placed on **Chandan Singh Vs. State of Haryana, 2004 (4) RCR (Crl.) 724** and **Rajeev Kumar Vs. State of Punjab, 1997 (4) RCR 846.**

Learned senior counsel has next argued that in the report under Section 173 Cr.P.C., it is stated that the petitioners/accused have committed the offence under Sections 18-A, 18-C, 27(b(ii) and 28 of DC Act. Sections 18-A and 28 of DC Act are reproduced as under: -

> *"**18-A** - Disclosure of the name of the manufacturer, etc.—Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.*
>
> ***28**. Penalty for non-disclosure of the name of the manufacturer, etc. —Whoever contravenes the provisions of section 18A 138 [or section 24] shall be punishable with imprisonment for a term which may extend to one year, or 139 [with fine which shall not be less than twenty thousand rupees or with both."*

It is argued that under Section 18-A of DC Act, every person, not being the manufacturer, has to disclose to the Drug Inspector the particulars of the person, from whom, he has acquired the drug or cosmetic and Section 28 of DC Act provides for penalty for violation of Section 18-A of DC Act, to be imprisonment for a period of 01 year or fine, which shall not be less than Rs.25,000/-. It is also submitted that offence under Section 18-A of DC Act would become punishable under Section 28 of DC Act, only if the accused is unable to disclose name of the person, from he has purchased the medicine and as no recovery was effected from petitioner No.1, therefore, no offence under Section 28 of DC Act is made out.

Learned senior counsel has further argued that even no offence for violation of Section 18 (c) punishable under Section 27(b)(ii) of DC Act is not made out. For a reference, Sections 18(c) and 27(b)(ii) of DC Act are reproduced as under: -

> ***"18.*** *Prohibition of manufacture and sale of certain drugs and cosmetics – From such date as may be fixed by the State Government by notification in the Official Gazettee in this behalf, no person shall himself or by any other person on his behalf -*
>
> *(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug for cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter.*
>
> *Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis.*
>
> *Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.*
>
> ***27(b)(ii)*** *- without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term*

which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years and of fine of less than one lakh rupees."

It is next argued that there is no allegation in the entire FIR that either the petitioners were selling or exhibiting for sale any drug, therefore, mere possession of a drug by petitioner No.2 is not an offence punishable under Section 27(b)(ii) of DC Act. It is also argued that even offence under Sections 420, 467, 468, 471 IPC are not made out, as no drug was found to be spurious, for which a person can be prosecuted under Section 17B of DC Act. For reference, Section 17B of DC Act is reproduced as under: -

*"**17B**- Spurious drugs.—For the purposes of this Chapter, a drug shall be deemed to be spurious,—*

(a) if it is manufactured under a name which belongs to another drug; or

(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or

(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or

(d) if it has been substituted wholly or in part by another drug or substance; or

(e) if it purports to be the product of a manufacturer of whom it is not truly a product."

It is further argued that in the absence of any such allegation or notification declaring Remdesivir injection falling under DC Act, no prosecution can be instituted against the petitioners. In support of his arguments, learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Sharma and others, 2020 SCC Online SC 683.** The conclusions/directions given by the Hon'ble Supreme Court read as under: -

"162. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence *under any other law. III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.*

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in *this regard.*

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers."

It is thus argued that in view of this judgment, the mandate of Section 32 of DC Act provides that the powers are available with the Drug Inspector under the DC Act for launching prosecution and a police officer cannot register FIR under Section 154 Cr.P.C.

Learned senior counsel has further relied upon another judgment of the Hon'ble Supreme Court in **Mohd. Shabir Vs. State of Maharashtra, (1979) 1 SCC 568,** to submit that under Section 27(a)(i) and (ii) read with Section 18(c) of DC Act, a person cannot be held guilty being in mere possession of a drug. Para No.4 of this judgment reads as under: -

"4. On an interpretation of section 27, it seems to us that the arguments of Mr. Singh is well founded and must prevail. The words used in section 27, nameely, "manufacture for sale", sells, have a comma after each clause but there is no comma after the clause "stocks or exhibits for sale". Thus the section postulate three separate categories of cases and no other. (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, section 27 of the Act would not be attracted. In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word "stock" used in section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contenton is wholly untenable and must be rejected. The inter pretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of section 27. We,

therefore, hold that before a person can be liable for prosecution or conviction under section 27 (a) (i) (ii) read with section 18 (c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant."

Learned senior counsel has next relied upon a judgment of the High Court of Madras in **Dr. S. Selvam Vs. State, 2011 (2) MWN (Cr.) 380,** to submit that where a person is facing prosecution under DC Act and it is found that a person is in mere possession of a drug without there being any evidence that the same is in possession of the person for the purpose of sale, the prosecution was quashed in exercise of powers under Section 482 Cr.P.C. The operative part of the judgment reads as under: -

"12. Therefore, it is well settled that the possession simpliciter would not amount to contravention of Section 18(c) of the Act punishable under the Section 27(b)(ii), Drugs and Cosmetics Act, 1940. It contemplates stocking the drugs for the purpose of sale or distribution.

13. In the present case, it is admitted that the petitioner is running a nursing home and he was in possession of the drugs, *which has been listed by the complainant. The possession is not denied. Whether it was exhibited for sale is to be considered. In the complaint, it is stated that the complainant has found stocks of various drugs in a separate room. There is no allegation that the stocks were exhibited for sale. It is further alleged that one Dr. Subramanian was summoned and he had produced original purchase bills alleged to have been issued by the petitioner. It is to be noted that there is rivalry between the petitioner and the landlord and only on his complaint, a Writ Petition was disposed of for the consideration of the representation and subsequent inspection, which led to filing of a case. Therefore, without examining the persons in whose name the receipts issued the validity or truthfulness of the purchase bills cannot be established. Admittedly, the complainant has not seized any book of sales bills from the premises.*

14. Normally, the High Court will not interfere in a criminal proceedings unless it is proved that there is an abuse of process of law or intended with harassment. In such circumstances, the Hon'ble Apex Court has highlighted the parameters in ***Bajanlal's case*** *and the Illustration (vii) of para 128 stands attracted which reads as follows:*

> *(vii) Where a Criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for*

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. Therefore, the mere possession will not attract an offence under the Drugs and Cosmetics Act and the continuance of the proceedings is nothing but abuse of process of law, initiated with an intention to harass the petitioner, who is a practising Cardiologist. It is a fit case to interfere with the proceedings. Hence, the entire proceedings in C.C. No.269 of 2010 on the file of the learned Judicial Magistrate, Tenkasi, Trunelveli District is quashed."

Learned senior counsel for the petitioners has further submitted that no offence under Section 7 read with Section 3 of EC Act is made out. Sections 3 & 7 of EC Act are reproduced below: -

*""**Section 3. Powers to Control Production, Supply, Distribution, Etc. of Essential Commodities.***

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defense India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred

by subsection

(1), an order made there under may provide, -

(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified foods crops;

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity, -

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part such commodity when produced or received by him, to the

Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such

circumstances as may be specified in the other.

Section 7. Penalties. --(1) If any person contravenes any order made under section 3,--

(a) he shall be punishable,

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine."

Reliance is placed upon **Atul Garg son of Janak Raj Vs. State of Punjab, 2012 (3) RCR (Crl.) 936** and **Liyakat Vs. State of Haryana, 2010 SCC Online (P&H) 11471,** where the FIRs under Section 7 of EC Act were quashed. The operative part of the judgment in **Liyakat's** case (supra) reads as under: -

"...5. As is evident from the record, that the police has registered a criminal case, vide FIR (Annexure P2) for the commission of indicated offence. Now the short and significant question, though important, that arises for determination in this

case is, as to whether the police is competent to seize the kerosene and to register a criminal case against the petitioner under section 7 of the E.C. Act or not?

6. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative.

7. This matter is no more res integra and is well settled. Moreover, the learned counsel for the parties are ad idem that this matter is squarely covered by the judgments of this Court in cases Ashwani Kumar v. The State of Haryana CRA No.989 SB of 1998 decided on 23.2.2010 and Atul Garg v. State of Punjab CRM No.M-22032 of 2010 decided on 11.11.2010, wherein, relying upon the earlier judgments in cases Krishna Grover Vs. State of Haryana, 2003(3) Crl.C.C.293, Raj Narain alias Kuka Vs. State of Punjab, 2003(2) RCR (Criminal),88, Harpal Singh and others Vs.State of Punjab, 1991 (3), RCR (Criminal), 307, Suresh Kumar Vs. State of Haryana, 1996, Crl.L.J. 4216, State of Haryana Vs. Ram Niwas, 2004 (1) RCR (Criminal) 693, State of M.P. Vs. Chunnilal @ Chunni Singh, 2009(2) RCR (Criminal) 758 (SC), and, Jeewan Kumar Raut & another Vs. Central Bureau of Investigation, 2009(3), RCR (Criminal), 586(SC), it was held that "the police did not have the jurisdiction to seize the kerosene and take any action against the petitioner-accused in this respect and only an officer of the *department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorized and notified by such Government or any officer not below the rank of Sales Officer of a Government Oil Company authorized by the Central Government, may seize the kerosene and proceed with the matter in accordance with law.*

8. Not only that, as described earlier, in the wake of inquiry, the kerosene in question was found to be of Inaam Depot Holder, as per police report (Annexure P3) and petitioner was found innocent, by virtue of inquiry report (Annexure P4). Therefore, the continuation of such criminal prosecution would amount to deep misuse/abuse of process of law. The police appears to have lodged a false FIR against the petitioner maliciously and vexatiously in order to wreak vengeance from him. Such malafide criminal prosecution only qua the petitioner deserves to be quashed, in view of law laid down by Hon'ble Apex Court in case State of Haryana and others v. Ch.Bhajan Lal and others, AIR 1992 Supreme Court 604, which was again reiterated in case Som Mittal v. Government of Karnataka 2008(2) R.C.R.(Criminal) 92. Hence, the ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand."

Similar view is taken in judgment of the High Court of Jammu and Kashmir and Ladakh in **Surinder Singh Vs. State of J&K, 2021 SCC Online J&K 638**, wherein, while interpreting Sections 3 & 7 of EC Act, it is held that in the absence of any notification, a person cannot be prosecuted merely because he is in possession of a commodity.

Reply by way of affidavit of Deputy Superintendent of Police, Samalkha, District Panipat is on record, in which details of the FIR and investigation conducted, are explained. It is stated that after registration of the FIR, investigation was carried out and petitioner No.2 Himanshu Garg made a disclosure statement that he had purchased 15 Remdesivir injections from Pardeep and sold it to a person at higher rates and on the date of his arrest, he, by purchasing 10 Remdesivir injections from Ashish and Pardeep, was returning back, when he was apprehended by the police. It is also stated that mere disclosures were made by Pardeep and other accused that they, by purchasing Remdesivir injections, were selling the same at higher rates, which constitute an offence even if there is no purchaser. It is next stated that since offence under Sections 420, 467, 468, 471 IPC were also made out, therefore, FIR was rightly registered. The relevant part of the reply in this regard reads as under: -

> *"In response thereto, it is respectfully submitted that as stated above, the petitioners have been arrested by the police while transporting the Remdesivir injections which have been transported by the accused to gain the profit without verifying its originality or fake, thus, petitioners cannot take the undue advantage of the provisions of special enactment of Drugs and*

Cosmetics Act."

With reference to arguments raised on behalf of the petitioners under Section 17B read with Sections 18(a), 18(c) and 27(b)(ii) of DC Act, it is stated in the reply that since petitioner No.2 Himanshu Garg was arrested at the spot with 10 Remdesivir injections and he could not justify the reasons for keeping it in his possession, therefore, he was arrested for keeping in possession the said injections during COVID-19 pandemic, for the purpose of selling it at higher rates.

With regard to objection raised by the petitioners regarding non-filing of a complaint by the competent authority under Section 28 of DC Act, it is stated that report of the Drug Control Officer was obtained on 29.04.2021 that CIA-II Staff received a secret information regarding sale of Remdesivir drug in illegal manner and a team was constituted and petitioner No.2 was found in a car in possession of 10 injections of COVIFOR Remdesivir. When the police team asked petitioner No.2 Himanshu Garg to submit copy of the purchase record or licence to stock the said drug, he was not able to produce the same, therefore, he has committed the offence under the DC Act and EC Act.

Learned State counsel has argued that after obtaining the report from the Drug Control Officer, Panipat, FIR was registered, however, it is not disputed in the entire reply that the complainant is not the Drug Control Officer and rather FIR has been registered by SI Jaibir Singh, who after arrest of petitioner No.2, has only obtained an opinion of the concerned Drug Control Officer, whether any offence is made out or not.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(a) A bare perusal of FIR as well as report under Section 173 Cr.P.C. would reveal that the police party headed by SI Jaibir Singh and four other police officials, while on patrol duty, received a secret information that petitioner No.2 Himanshu Garg @ Golu is selling Remdesivir injections for Rs.30,000/- and can be apprehended, as he is coming in a car. Thereafter, SI Jaibir Singh contacted Drug Inspector Vijay Raji, who reached at the spot and petitioner No.2 was arrested with 10 injections of Remdesivir 100 mg/vial COVIFOR and he could not give any satisfactory reply regarding any permit or licence, therefore, he was arrested and investigation was carried out, in which, on the basis of his disclosure statement, other accused were nominated.

Neither the FIR nor the report under Section 173 Cr.P.C. or the reply by way of affidavit of DSP, Samalkha, District Panipat reveal that drug Remdesivir 100 mg/vial COVIFOR was declared to be a prohibited drug either under the DC Act or controlled commodity under EC Act. The allegations against petitioner No.2 are that he was in possession of the drug and in view of judgment in **Mohd. Shabir**'s case (supra), mere possession of a drug is not an offence under Section 27(b)(ii) read with Section 18(c) of DC Act.

Since there is no notification declaring the drug

Remdesivir to be a controlled commodity under the EC Act, in view of judgments in **Surinder Singh**'s case (supra) and **Dr. S. Selvam**'s case (supra), where possession '*simpliciter*' of a drug will not amount to contravention of Section 18(c) of DC Act, even no offence under EC Act is made out.

(b) There is no allegation in the FIR as to how Sections 420, 467, 468, 471 IPC are made out, as the report submitted under Section 173 Cr.P.C. nowhere reflects that drug recovered from petitioner No.2 Himanshu Garg was either spurious or fake or reflected any misbranding.

(c) The entire prosecution of the petitioners is based on recovery of 10 injections of Remdesivir, which is not a scheduled drug under DC Act or EC Act.

For the reasons recorded above and in view of judgment of the Hon'ble Supreme Court in **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991 (1) RCR (Crl.) 383**, this petition is allowed and FIR No.178 dated 29.04.2021 under Sections 18(A), 18(C), 27(b)(ii), 28 of the DC Act, Sections 3 & 7 EC Act and Sections 420, 467, 468, 471 IPC, registered at Police Station Sector-29, District Panipat and all the subsequent proceedings arising therefrom, including the report under Section 173 Cr.P.C. are ordered to be quashed qua the petitioners.

[ARVIND SINGH SANGWAN]
JUDGE

04.04.2022
vishnu

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No