

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

**1. IOIN-CWP-7490-2014 in/and
CWP-7490-2014
Date of decision: 12.05.2022**

Sakattar Singh and another
... Petitioners

Versus

Union of India and others
... Respondents

2. CWP-11007-2014

Lakhwinder Singh @ Lakha and others
... Petitioners

Versus

Union of India and others
... Respondents

3. CWP-6244-2016

Sandeep Kumar Garg
... Petitioner

Versus

Union of India and others
... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. R.K. Kapoor, Advocate, and
Mr. D.S. Pheruman, Advocate,
for the petitioner(s) in CWP-7490-2014.

Ms. Puneeta Sethi, Advocate, for the respondent-UOI.

Mr. Avinit Avasthi, Assistant Advocate General, Punjab.

RAVI SHANKER JHA, C.J. (Oral)

With the consent of learned counsel for the parties, CWP-7490-
2014, which was admitted vide order dated 23.04.2014, is taken on board,
along with CWP-11007-2014 and CWP-6244-2016.

These petitions have been filed by the petitioner(s) praying for quashing Entry 239 in the table of S.O. No. 1055(E), dated 19.10.2001, issued by respondent No.1 as well as Note 4 appended thereto on the ground that the aforesaid entry and note in the notification dated 19.10.2001, issued by the Central Government in exercise of powers contained in sub-clause (viia) and (xxiia) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') is beyond the powers conferred on the Central Government.

At the very outset, learned counsel for the parties concede that Note 4 in the aforesaid notification was subject matter of challenge before the Supreme Court and vide its decision rendered in **Hira Singh and another v. Union of India and another**, 2020 (20) SCC 272, it has already upheld the constitutional validity of the said Note.

Learned counsel for the petitioner(s) submits that in view of the decision rendered by the Supreme Court in the aforesaid case, though the challenge to Note 4 of notification dated 18.11.2009 does not survive, but challenge to the constitutional validity of Entry 239 in the said notification does remain alive.

He submits that under sub-clause (viia) and (xxiia) of Section 2 of the Act, the only power that has been conferred upon the Central Government is to notify "commercial quantity" and "small quantity" in relation to narcotic drugs or psychotropic substances, whereas the Central Government in exercise of this power has notified Entry 239 in the said notification, which results in taking into consideration mixture of preparations of narcotic drugs or psychotropic substances with or without neutral material. It is submitted that Entry 239, which also takes into

consideration neutral material while determining the commercial quantity or small quantity of narcotic drugs or psychotropic substances, is beyond the power conferred upon the Central Government by Section 2(viia) and 2(xxiiia) and is, therefore, ultra vires.

We have heard learned counsel for the parties at length to appreciate as to whether anything survives for adjudication in respect of validity of Entry 239 after the decision of the Supreme Court in Hira Singh's case (supra). The decision of the Supreme Court and the reasoning given by it while upholding Note 4 is material. The relevant part of the decision (ibid), which is material for considering the submissions of learned counsel for the petitioner, is:

“10. On merits whether any mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, the Statement of Objects and Reasons of NDPS Act is required to be considered. As per the preamble of NDPS Act, 1985, it is an Act to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents.

10.1. In the case of *Directorate of Enforcement vs. Deepak Mahajan and Another* reported in (1994) 3 SCC 440, it is observed by this Court that every law is designed to

further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted (at SCC pp. 453-54, para 25) the following passage in *Maxwell on Interpretation of Statutes, 10th Edition page 229*:

"25 ... Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical

inconvenience may result and the legislative exercise and its scope and object may not become futile.

10.2 Therefore, considering the statement of objects and reasons and the preamble of the NDPS Act and the relevant provisions of the NDPS Act, it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from sub-clause (vii-a) and (xxiii-a) of Section 2 of NDPS Act emphasis is on Narcotic and Drug or Psychotropic Substance (Sections 21, 22, 23, 24, 27 and 43). Even in the table attached to the Notification dated 19.10.2001, column no. 2 is with respect to name of Narcotic Drug and Psychotropic Substance and column nos. 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19.10.2001 specifically provides that quantity shown against the respective drugs listed in the table also apply to the preparations of the drug and the preparations of substances of note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or the commercial quantity” with respect to Narcotic Drugs and Psychotropic Substance mentioned in column no.2 the quantity mentioned in the clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs / psychotropic drugs mentioned in column no.2 and any mixture or preparation that of with or without the neutral material of any of the drugs mentioned in table, lesser of the small quantity between the quantities given against the respective Narcotic Drugs or Psychotropic Substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example,

mixture of 100 gm is seized and the mixture is consisting of two different Narcotic Drugs and Psychotropic Substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid two respective Narcotic Drugs and Psychotropic Substance is required to be considered. For the purpose of determination of the “small quantity or commercial quantity”, in case of entry 239 the entire weight of the mixture / drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in the case of *E. Micheal Raj* (Supra) is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

10.3 At this stage, it is required to be noted that illicit drugs are seldom sold in a pure form. They are almost always adulterated or cut with other substance. Caffeine is mixed with heroin, it causes that heroin to vaporize at a lower rate. That could allow users to take the drug faster and get a big punch sooner. Aspirin, crushed tablets, they could have enough powder to amend reversal doses of drugs. Take example of heroin. It is known as powerful and illegal street drug and opiate derived from morphine. This drug can easily be “cut” with a variety of different substances. This means that drug dealer will add other drugs or non -intoxicating substances to the drug so that they can sell more of it at a lesser expense to themselves. Brown-sugar / smack is usually made available in powder form. The substances is only about 20% heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. These are only few examples to show and demonstrate that even mixture of narcotic drugs or psychotropic substance is more dangerous. Therefore, what is harmful or injurious is the entire mixture/tablets with neutral substance and Narcotic Drugs or Psychotropic Substances. Therefore, if it is accepted

that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated. There may be few punishment for “commercial quantity”. Certainly that would not have been the intention of the legislature.

10.4. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”, including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of NDPS Act would be achieved. Any other intention to defeat the object and purpose of enactment of NDPS Act viz. to Act is deterrent.

10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones

must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1985 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted.

11. Now, so far as the challenge to the impugned Notification No.2942(E) dated 18.11.2009 issued by the Union of India, by which, “Note 4” has been added to Notification S.O.1055(E) dated 19.10.2001 specifying small quantity and commercial quantity of the narcotic drugs and psychotropic substance covered under the NDPS Act, 1985 is concerned, as such it can be said to be clarificatory in nature and / or by way of *ex abundanti cautela* / abundant caution. As observed herein above, while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), it includes the weight of neutral substance (s) also and not only the actual content by weight of the offending drug. Therefore, even if “Note 4” which has been added vide Notification dated 18.11.2009 is not added, in that case also, it makes no difference and / or change. It appears that after the decision of this Court in the case of E. Micheal Raj (Supra) by way of abundant caution, the Union of India

has come out with a Notification dated 18.11.2009 adding “Note 4”. Thus, adding “Note 4” by Notification dated 18.11.2009 to the earlier Notification dated 19.10.2001 can be said to be clarificatory and by way of abundant caution only. Even otherwise, for the reasons stated above, the impugned Notification dated 18.11.2009 adding “Note 4” to the earlier Notification dated 19.10.2001, cannot be said to be contrary to the scheme and the various provisions of the NDPS Act.

11.1. At this stage, it is required to be noted that Notification dated 19.10.2001 was issued in exercise of powers conferred by clauses (viia) and (xxiia) of Section 2 of NDPS Act. Section 2(viia) defines “commercial quantity” and Section 2(xxiia) defines “small quantity” and it means any quantity greater or lesser than the quantity specified by the Central Government by Notification in the official gazette, as the case may be. Notification dated 19.10.2001 specifies the small quantity and commercial quantity with respect to respective narcotic drugs and psychotropic substances. As observed herein above, by abundant caution and to make it further clear “Note 4” has been added. Therefore, it cannot be said to be ultra vires to Scheme and relevant provisions of the NDPS Act, as contended on behalf of the accused and intervener. Therefore, challenge to the impugned Notification dated 18.11.2009 adding “Note 5” of the clause to the Notification S.O.1055(E) dated 19.10.2001 fails.

12. In view of the above and for the reasons stated above, Reference is answered as under:

12.1. The decision of this Court in the case of *E. Micheal Raj* (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the

purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

12.2. In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances;

12.3. Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

12.4. Challenge to Notification dated 18.11.2009 adding “Note 4” to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

13. The Reference is answered accordingly. The Intervener Application stands disposed of. Now, respective Appeals be placed before the appropriate Court taking up such matters for deciding the appeals in accordance with law and on merits and in light of the observations made hereinabove and our answer to the Reference, as above.”

It is evident that the Supreme Court in the aforesaid decision has categorically held that intention of the legislature, keeping in view the very object and reasons and the preamble of the NDPS Act as well as its provisions, is to include the quantity of neutral substance(s), while considering and determining “small quantity” and “commercial quantity” defined under Section 2(viia) & (xxiia). It has been further held that the

interpretation to the contrary given by the Supreme Court, in case E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, 2008(5) SCC 161, to the provisions of the Act and holding that neutral substances had to be excluded is not a good law.

It is worth mentioning that the same learned counsel as appearing in the present petition has appeared and argued the matter before the Supreme Court in the case of Hira Singh (supra) and exactly the same and identical arguments made by him and the issues raised by him before the Supreme Court, to assail the validity of Note 4 appended to notification dated 19.10.2001, have also been raised and argued before this Court. The Supreme Court has not agreed with the contention of the learned counsel for the petitioners in the case of Hira Singh (supra) by recording a finding that in view of the Object and Reasons, the Preamble of the NDPS Act and the relevant provisions of the NDPS Act, it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug for determining small quantity or commercial quantity, and that right from sub-clause (viia) and (xxiia) of Section 2 of the NDPS Act emphasis is on narcotic drugs and psychotropic substance. In the circumstances, the challenge to Entry 239 of the notification dated 19.10.2001 also deserves to be rejected on the same grounds.

In view of the aforesaid, when the Supreme Court has already interpreted Section 2(via) and (xxiia) of the NDPS Act, relating to notification of commercial quantity and small quantity to include the quantity of neutral substance(s), it cannot under any circumstances be said

that Entry 239 travels beyond the power conferred upon the Central Government by the aforesaid clauses.

We are of the considered opinion that in view of the law laid down by the Supreme Court, Entry 239 of notification dated 19.10.2001 is within the power of the Central Government to notify and cannot be said to be ultra vires or unconstitutional.

The petitions are, accordingly, dismissed.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

12.05.2022
Rajan

Whether speaking / reasoned:	YES/NO
Whether Reportable:	YES/NO