

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

CRM-M No.51512 of 2022 (O&M)

Reserved on:24.11.2022

Decided on: 01.12.2022

Anav Jain

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Nikhil Ghai, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.177 dated 25.04.2022, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Rai, District Sonapat and all other consequential proceedings arising therefrom.

In pursuance to the notice of motion order, learned counsel for the State has filed a status report along with certain documents, which are taken on record.

Brief facts of the case as set up by the petitioner are that the petitioner is a young Entrepreneur, who has set up a Company by the name of M/s. Hemp Global Private Limited, in order to manufacture Ayurvedic/Unani/Siddha medicines and it took 03 years to complete all

formalities.

The petitioner incorporated the Company on 26.11.2018, and thereafter, he applied to the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, who issued a Certificate of recommendation (Annexure P-2) as a **“Start-up”** w.e.f. 13.02.2019, for a period of 10 years. Thereafter, the petitioner applied for a license with the State Licensing Authority (ASU), Directorate of AYUSH, Haryana, Panchkula for grant of manufacturing license and sale of Ayurveda/Unani/Siddha Medicines. The Directorate of AYUSH, Haryana, Panchkula, vide its license in Form 25-D issued under Rule 154, issued a license to manufacture and sale of Ayurveda and Unani Medicines from 02.06.2020 to 01.06.2025, with certain terms and conditions. The petitioner was granted license No.1071-ISM (HR), on the condition that he will have two Technical Staff i.e. Dr. Jitender Kumar, BAMS (Technical Person) and Sh. Madhav Aggarwal, B.Sc. (Quality Control). Vide this license, a list of 40 classical Ayurvedic Formulations were approved under Rule 157 of the Drugs and Cosmetic Rules, 1945 (hereinafter to be read as ‘the Rules of 1945’).

The petitioner, thereafter, was granted further permission for manufacturing of 60 more medicines on 17.07.2020 and again, for some more medicines on 10.09.2020, 27.11.2020, as per permissions granted by AYUSH Department, Haryana.

Thereafter, the petitioner started setting up of manufacturing units by purchasing machinery in the year 2021, as per various purchase bills attached as Annexures P-7 (Colly.).

The petitioner has also applied for manufacturing of certain medicines in which "**Bhang**" ("**Hemp**") was required as raw materials and in this regard, the petitioner applied to the AYUSH Department, Haryana, who further recommended to the Narcotic Commissioner of India, who is an officer of Central Government appointed under Section 5 of the NDPS Act, to allot a quota of 35 tonnes (with one time possession limit of 12 tonnes) vide letter dated 14.08.2020. The letters issued by the Directorate, AYUSH Department, Haryana to Narcotic Commissioner of India, Central Bureau of Narcotics, Government of India, Ministry of Finance, are relied upon as Annexures P-9 and P-10, dated 14.08.2020 and 27.11.2020.

In the meantime, the petitioner also applied for grant of Druggist License in Form No.24 and the Excise and Taxation Commissioner, Haryana, Panchkula, vide its communication to Deputy Commissioner of Excise, Sonapat (as the manufacturing unit of the petitioner was situated in HSSIIDC Rai, District Sonapat), granted a license in Form No.24 under Rule 74 of the Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985, for the Financial Year 2020-21, for possession of 35 tonnes annual Hemp and 12 tonnes Hemp as one time possession limit, for manufacturing Ayurvedic medicines on the basis of a valid Drug License and recommendation issued by the State Authority, Directorate of AYUSH Department, Haryana, Panchkula. This license was granted on 28.12.2020 vide Annexure P-11.

Thereafter, the petitioner in order to start his manufacturing of medicines had purchased 12 tonnes of Hemp from

one Ravinder Chaudhary resident of Village Sehdevpur, District Haridwar, who was holding a valid license for sale and was having an office in Rai itself, as relied upon by the petitioner vide Annexures P-13 and P-14.

The ***“Hemp” (Bhang Leaves)*** was supplied to the petitioner through Aaryan Road Lines by the aforesaid Ravinder Chaudhary, for a sum of Rs.4.20 lacs vide Invoice No.19 dated 25.06.2021.

Thereafter, the petitioner bought some more raw materials from the same supplier Ravinder Chaudhary, as per the bills/e-way bills.

In the meantime, the petitioner applied for manufacturing of additional items and vide letter dated 11.03.2022, the State Licensing Authority, Directorate of AYUSH, Haryana, Panchkula, granted permission for manufacturing of certain additional items with a note ***“Only for External Use, No OTC Medicine use.”***

In the meantime, the complainant Dr. Shashikant Sharma, District Ayurvedic Officer, constituted a team and made a surprise visit to the premises of the petitioner on 24.04.2022 and got the impugned FIR registered with the following allegations:-

“To SHO Rai (District Sonapat) Subject: For registration of case under NDPS Act against Anav Jain s/o Shri Vinay Jain, Director World of Hemp Global Private Ltd. Plot No.1796, HSIIDC Industrial Area, Rai, District Sonapat. Sir on 25.04.2022 I, Dr. Sashi Kant Sharma, District Ayurvedic Officer, Ambala, Shri Sunil Dhaiya, Drug Control Officer, Ambala, Shri Sandeep Huda, Drug Control officer, Sonapat, Shri Ajay Kumar,

Inspector HSNCB, Rohtak had inspected the above sated Ayurvedic team and the above company has a licence to manufacture ayurvedic medicines. During inspection resin separated from cannabis was prepared in the factory, the above team said that they have prepared the “Bhang ka Ghan” by Hemp process. At that time no licence or permission was produced for preparation of Hemp Cannabis (Resin). The weight of the same is 67.05 Kg. The same is violation of Section 20 NDPS Act. The recovered Resin separated from Cannabis is being produced before you and FIR be registered against the above person and legal action be taken.”

Learned counsel for the petitioner has assailed the impugned FIR, on the following grounds:-

(a) The petitioner being a young Entrepreneur, aged about 25 years, on completion of his education, in order to set up a manufacturing unit of Ayurvedic/Unani/Siddha medicines and was in process to get all the licenses from 2019 till 2022, when suddenly the FIR was registered and in the intervening period, he got all the necessary licenses from the AYUSH Department, Industrial Department, Excise Department as well as from the Narcotic Commissioner and thereafter, he purchased the machinery for setting up of the manufacturing unit and it took 03 years time for him to set up the manufacturing units after obtaining the licenses.

(b) Before the petitioner could start his production, he was required to purchase the raw materials and as the petitioner was duly licensed to purchase "**Hemp**" ("**Bhang**"), which he purchased from an authorized person namely Ravinder Chaudhary, through bills/e-way bills and he was in the process of starting the preparation of

manufacturing, when the impugned FIR was registered.

(c) The only reasoning given in the FIR is that when the complainant visited the premises of the petitioner, he could not produce any license and there was no manufacturing process going on, which is factually incorrect and does not disclose commission of any offence under the NDPS Act.

(d) The petitioner was not given any time, as on the same day, the impugned FIR was got registered and it is admitted case of the prosecution that he was in the process of starting the manufacturing and his first lot of the manufactured drug was yet to be prepared and commissioned, as it was the stage of preparation of the raw materials.

(e) During the investigation, the police has verified this fact that the petitioner was holding all the necessary licenses for manufacturing of Ayurvedic and Unani medicines and had a valid license to keep "**Hemp**" (Bhang Leaves) and has used those leaves only for preparation of raw materials for further preparation of the medicines.

(f) During the investigation, the FSL report has been received and the observations of the same, reads as under:-

“Observations:

- ***The tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the sample.***
- ***The tests were positive for the presence of Cannabis resin in the sample.***

Opinion: The sample was identified as Cannabis resin.”

The aforesaid FSL report dated 17.11.2022, is taken on record as **Mark 'X'**.

(g) The petitioner was granted valid license and Hemp Leaves is defined in Quality Standard of Indian Medicinal Plants and it is mentioned that it contains ***Tetrahydrocannabinol, Cannabinol and Cannabidiol***.

(h) The test as per the Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, regarding the Working Procedure Manual of conducting the test is as under:-

“5. 7.2.5 Test for differentiation between Bhang, Ganja and Charas.

Extract the suspected material of cannabis in ethanol. Take a drop of extract in a cavity of a spot tile or in a micro tube, add 2 drops of chromogenic reagent 1 and mix thoroughly followed by addition of 2 drops of reagent 2.

Bhang gives green colour, ganja gives blue colour while charas gives violet colour.

Reagent 1: p-Aminophenol (1 mg) in ethanol (10 ml)

Reagent 2: Caustic potash (1 g) in distilled water (10 ml)”

Learned counsel for the petitioner has, thus, submitted that the recovery from the petitioner was within the prescribed limit under the license given to the petitioner.

(i) Learned counsel for the petitioner has further argued that Section 2(iii) of the NDPS Act defines “**Cannabis**” as under:-

“2 (iii). Cannabis (Hemp) means:-

(a) Charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the

cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.”

Learned counsel for the petitioner has contended that this Section defines that only the flowering and fruiting top of a cannabis plant, excluding the seeds and leaves fall under the definition of “**Ganja**”, which is prohibited under the NDPS Act and the leaves and seeds have been excluded from the definition of “**Ganja**” under the NDPS Act, and there is no reference to the term “**Bhang**” as a prohibited drug. It is further submitted that mere possession of “**Cannabis/Hemp Leaves**” do not fall under the prohibition of the NDPS Act and therefore, the recovered material from the premises of the petitioner, do not fall within the definition of “**Cannabis**” or “**Ganja**”.

(j) Learned counsel for the petitioner has also submitted that even as per the FSL report, it was “**Cannabis Resin**”, which would not fall within the definition of “**Cannabis**” as defined under the NDPS Act as it is the case of the prosecution that the petitioner has purchased the leaves of Cannabis from a license-holder for manufacturing medicines and he was under the process of manufacturing medicines, when the complainant took away the raw

materials and therefore, the sample showing presence of ***Tetrahydrocannabinol, Cannabinol and Cannabidiol***, was part of manufacturing process derived from the Bhang leaves as per Section 2(viia) and (x) of the NDPS Act and therefore, no offence under the NDPS Act, against the petitioner is made out.

(k) Learned counsel for the petitioner, in support of his arguments, has relied upon the judgment ***“State of Himachal Pradesh vs Roshan Lal”***, 2010 SCC (Online) HP 2554. The operative part of the said judgment, reads as under:-

“29. As noticed hereinabove, the only tests, which were conducted by the Experts, were to find out tetrahydrocannabinol or cystolithic hair. They found tetrahydrocannabinol but did not indicate in their reports the percentage thereof. While in the witness-box also, the Experts did not say what was the percentage of tetrahydrocannabinol in the samples. Specific category of a cannabis product, like Charas, ganja, or mixture, as defined in Section 2(iii) of the Act, or anything else, like bhang, etc., can also be determined, with reference to the percentage of in the stuff. As noticed hereinabove, percentage of tetrahydrocannabinol varies from one product to other product of cannabis.

30. According to Parikh’s Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, in the case of bhang it is 15 per cent, in the case of ganja it is about 25 per cent and in the case of Charas it is between 25 and 40 per cent. When the percentage of tetrahydrocannabinol in the sample stuff is not indicated in the report nor had any test been conducted to ascertain whether the stuff was Charas, that is to say resin, or some other preparation of cannabis, it cannot

be said that the stuff was in fact Charas. As regards cystolithic hair, these being the fibre of cannabis plant, are bound to be present in all the products of cannabis. It is quite likely that the samples were only of bhang, i.e. the dried leaves of cannabis plant, which is also supposed to contain 15 per cent concentration of tetrahydrocannabinol. Possession of only the leaves or the seeds of cannabis plant is no offense, because it is only the Charas, ganja or mixture, as defined in Section 2(iii) of the Act, which is an offense, under Section 20 of the Act. Leaves and seeds of cannabis plant are not included either in the definition of Charas or ganja and are rather specifically excluded from the definition of ganja, unless accompany the flowering and fruiting tops of the plant.”

Learned counsel for the petitioner, thus, argued that the FSL report is absolutely silent about the percentage of *Tetrahydrocannabinol, Cannabinol and Cannabidiol* and therefore, no offence against the petitioner is made out as it is own case of prosecution that by manufacturing process the same is prepared from “Bhang” i.e. Cannabis leaves.

(1) Similar view was taken by this Court in “*Arjun Singh vs State of Haryana*”, 2004 (4) RCR (Criminal) 506, 2004 SCC (Online) 828. The relevant portion of the said judgment, is reproduced as under:-

“5. After hearing the arguments of the learned counsel for the parties, I am of the opinion that this appeal deserves to be allowed and the conviction and sentence of the appellant are liable to be set aside. In all the aforesaid three judgments, it has been held by different High Courts, including this Court, that bhang

(hemp) does not fall under the definition of Cannabis (hemp) as defined under Section 2(iii) of the Act. Thus, its possession does not constitute an offence punishable under the Act.

6. In Samid's case (supra), the Allahabad High Court summoned the officers dealing with the narcotic drugs and cases relating thereto to explain the Court whether bhang is a narcotic or psychotropic drug and the possession of which is punishable under the Act or not. In response to that, the letter given by the Assistant Director, Narcotics Control Bureau, Varanasi was placed before the Court in which it was clearly stated that so far as the question of inclusion of 'bhanga' under the Act is concerned, it is explicit in the Act itself that 'bhanga' is not covered under the Act. Section 8 of the Act lays down prohibition of certain operations and prohibits the transaction in regard to Ganja only and not the bhanga. After considering the said letter and the definition of Cannabis (hemp) as given under Section 2(iii) of the Act and the cannabis plant, as given in Section 2(iv) of the Act, the Court came to the conclusion that 'bhanga' is not covered under the Act. Therefore, no person can be punished for its possession under the Act. However, it was held that under the Excise Act, the possession of bhanga is punishable but not under the Act.

7. Similarly, in Manjee's case (supra), the Rajasthan High Court has elaborated and analysed the various definitions given under the Act and then came to the conclusion that bhanga does not fall under the definition of Cannabis (hemp) as defined under Section 2(iii) of the Act, by observing as under:-

"13. It is apparent from aforesaid two enactments that under Act No. 2 of 1950 Charas, Ganja and Bhanga are included within the definition of cannabis (Hemp) whereas under

Narcotic Drugs And Psychotropic Substances Act Bhang is excluded. Bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of Narcotic Drugs And Psychotropic Substances Act. It is also to be noticed that under Act No. 2 of 1950 cultivation of only cannabis (Hemp) plant i.e. Charas, Ganja and Bhang is an offence under Section 54(b) and punishable under Section 54(g) of the said Act whereas under Narcotic Drugs And Psychotropic Substances Act cultivation of any cannabis plant which means any plant of the genus cannabis as defined under Section 2(iv) of Narcotic Drugs And Psychotropic Substances Act is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. In my humble opinion although Bhang is excluded from the definition of cannabis (Hemp) under the Narcotic Drugs And Psychotropic Substances Act yet it does fall within the definition of cannabis plant and as such its cultivation is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. I am also of the opinion that cannabis (Hemp) is one of the species of cannabis plant, therefore, it cannot be held that since Bhang is excluded from the definition of cannabis (Hemp) under the Narcotic Drugs And Psychotropic Substances Act one of the species of cannabis plant, therefore, its cultivation is not an offence and it is not punishable under Section 20(b)(i) of the said Act.

14. In my considered opinion cultivation of Bhang is punishable under Narcotic Drugs And Psychotropic Substances Act although it is not included within the definition of cannabis (Hemp) and not Act No. 2 of 1950 within the meaning of

Article 254 of the Constitution of India. As regards cultivation of Bhang is concerned, the Narcotic Drugs And Psychotropic Substances Act would prevail over Act No. 2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by Parliament.

15. However, it is made clear that personal use and sale of Bhang is not an offence under Rule 24 of Rajasthan Narcotic Drugs and Psychotropic Rules, 1984, since in the present case the question of possession and sale of Bhang is not involved, therefore, it is left open to be decided in an appropriate case."

8. In Gurdial Singh's case (supra), this Court also came to the afore-said conclusion while observing as under:-

"13. It is apparent from aforesaid two enactments that under Act No. 2 of 1950 Charas, Ganja and Bhang are included within the definition of cannabis (Hemp) whereas under Narcotic Drugs And Psychotropic Substances Act Bhang is excluded. Bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of Narcotic Drugs And Psychotropic Substances Act. It is also to be noticed that under Act No. 2 of 1950 cultivation of only cannabis (Hemp) plant i.e. Charas, Ganja and Bhang is an offence under Section 54(b) and punishable under Section 54(g) of the said Act whereas under Narcotic Drugs And Psychotropic Substances Act cultivation of any cannabis plant which means any plant of the genus cannabis as defined under

Section 2(iv) of Narcotic Drugs And Psychotropic Substances Act is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. I am also of the opinion that cannabis (Hemp) is one of the species of cannabis plant, therefore, it cannot be held that since Bhang is excluded from the definition of cannabis (hemp) under the Narcotic Drugs And Psychotropic Substances Act one of the species of cannabis plant, therefore, its cultivation is not an offence and it is not punishable under Section 20(b)(i) of the said Act.

14. In my considered opinion cultivation of Bhang is punishable under Narcotic Drugs And Psychotropic Substances Act although it is not included within the definition of cannabis (Hemp) and not under Act No. 2 of 1950 within the meaning of Article 254 of the Constitution of India. As regards cultivation of Bhang is concerned, the Narcotic Drugs And Psychotropic Substances Act would prevail over Act No. 2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by Parliament."

9. In view of the afore-stated authoritative position of law, the Bhang is not covered under the definition of cannabis (hemp), therefore, the conviction and sentence of the appellant under Section 20-B of the Act is wholly illegal and without jurisdiction. In the instant case, from the possession of the appellant, 15 ½ Kgs. Bhang was recovered for which he has been charged and convicted under Section 20-B of the Act."

Similarly, learned counsel for the petitioner has relied

upon the judgment of Bombay High Court “*Madhukar vs The State of Maharashtra*”, 2002 SCC (Online) 1271, wherein the following observations have been made:-

“6. The learned Counsel appearing for the appellant, placing reliance on the exclusion which finds place in section 2(iii)(b) of the N.D.P.S. Act, 1985, submits that when there is a specific exclusion of the leaves of the cannabis plant from the definition of Ganja, Bhang cannot be construed to be falling within the definition of cannabis (hemp). The learned Counsel has placed reliance on the judgment of some of the High Courts to bring home his point that Bhang i.e. the leaves of cannabis plant being specifically excluded from the definition of Ganja cannot fall under cannabis (hemp) viz. Narcotic Drug. The learned Counsel invited my attention to a judgment in the case of Samid v. State,. In the said case recovery of Bhang was made from the accused and the accused was prosecuted for the commission of offence under sections 8 and 20 of the N.D.P.S. Act. An identical question fell for consideration before the learned Judge of Allahabad High Court i.e. as to whether the possession of Bhang constitutes an offence under section 20 of N.D.P.S. Act, 1985 or to put in other words as to whether Bhang is in any manner regulated by the provisions of the N.D.P.S. Act, 1985. As the said question was technical question, the learned Single Judge with the assistance of the learned A.G.A., had summoned responsible officer of the rank of the Assistant Director from the Narcotic Control Bureau who routinely dealt with the narcotic drugs and cases relating thereto. A report was forwarded by the said officer to the Court and in the said report, he stated thus:

“So far as, the question of inclusion of Bhang

under N.D.P.S. Act is concerned, it is explicit in the Act itself that Bhang is not covered under N.D.P.S. Act. Section 8 of the N.D.P.S. Act, which lays down prohibition of certain operations, prohibits the transaction in regard to 'Ganja' and not the 'Bhang'.

Although as defined under section 2(xiv), Narcotic drugs, cover cannabis (hemp), but it has been explained under section 2(1), as under:-

2(ii) "Cannabis (hemp)" means:-

(a) Charas, that is the separated resin, in whatever form, whether crude or purified, obtained from the Cannabis plant and also Includes concentrated preparation and resin known as Hashish oil or liquid Hashish;

(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material of any of the above forms of cannabis or any drink prepared.

As such, it may be seen that 'Bhang' has not been covered in explicit terms, under the meaning of cannabis (hemp)."

7. As it was categorically opined by a high ranking officer from Narcotics Control Bureau that Bhang is not covered within the meaning of Cannabis (hemp), the Court placing reliance on the same and on reading the definition of cannabis (hemp) came to the conclusion that Bhang is not a narcotic or psychotropic drug and as such its possession is not an offence. Taking this view of the matter, the conviction and sentence of the accused under sections 8 and 20 of the N.D.P.S. Act was set aside. The learned Counsel thereafter placed reliance on a

judgment in the case of Nirmal Chandra Sahoo v. State of Orissa. The Orissa High Court quashed the proceedings initiated against the accused under section 20(b) of the N.D.P.S. Act when Bhang was found to be in his possession. In the said case, though the prosecution claimed to have recovered 12 kgs. of Ganja, the Analyst Report indicated that the sample contained partly powdered cannabis leaves (Bhang) with seeds of cannabis plant, and as the expert's opinion did not support the prosecution case that what was seized was ganja, the prosecution came to be quashed. In the said case, the learned Judge of Orissa High Court held that Bhang not being a contraband article and not punishable under section 20(b) of the Act, proceeded to quash the proceeding.”

Further reliance has been placed upon the recent judgment passed by the High Court of Karnataka “*Roshan Kumar Mishra vs State of Karnataka*”, 2022 SCC (Online) 1484, wherein while relying upon the aforesaid judgments, it is again held as under:-

“7. In view of the above said decisions of both Bombay High Court as well as Punjab and Haryana High Court wherein, they have followed the decision of Rajasthan High Court and it is worth to mention the definition of Section 2(iii) of NDPS Act which reads as under:

(iii). Cannabis (Hemp) means:-

(a) Charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when

not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.”

8. On bare reading of the provision under Section 2(iii)(a) and (b) that charas and ganja or (c) i.e., any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom, there is no scientific evidence before this Court to show that the Bhang is prepared out of either charas or ganja or ganja leaves. Since ganja leaves and seeds are excluded from the definition of ganja and nowhere in the NDPS Act the Bhang is referred as a prohibited drink or prohibited drug. Even the State Government has not made any rules under the NDPS and mentioned about the Bhang as prohibitory drug or issued any notifications in respect of Bhang.

9. It is worth to mention that the Bhang is a traditional drink, most of the people used to drink in North India especially near the Shiva temples and it is also available in Lassi shops like all other drinks. That apart, the said Bhang were sold in the market with branded names. Therefore, until the receipt of forensic science lab report, in order to confirm that this bhang is prepared out of the by the charas or ganja, the Court cannot come to any conclusion that the bhang is prepared out of the substance of ganja. Therefore, at present, I am agreeing with the judgments of the Bombay High Court as well as Punjab and Haryana High Court in the above said decisions that bhang is not covered under the NDPS Act.”

(m) Learned counsel for the petitioner has next relied upon a report submitted by the complainant i.e. the District Ayurvedic

Officer before the Additional Sessions Judge, Sonapat, in reply to a Court query as to whether the recovery of “**Bhang ka Ghan**” i.e. concentrated form from the manufacturing unit of Ayurvedic medicines falls under violation of the NDPS Act or under the Drugs and Cosmetics Act.

The complainant Dr. Shashikant Sharma, submitted an affidavit before the Additional Sessions Judge, Sonapat in the collateral proceedings wherein it was observed as under:-

“4. That this special constituted team raised the premises of M/s World of Hemp Global Pvt. Ltd. At 10.30 AM. This raid continued for about 11 hours i.e. till 9.30 PM. During the inspection, it was found that at the said premises no machine for manufacturing of Ayurvedic Medicines was found installed or uninstalled. There was no manufacturing of Ayurvedic medicines at the given premises of accused’s firm. No record regarding manufacturing, sale and distribution of Cannabis Resins was produced by the firm. No technical or non-technical worker was found employed in the said firm. Even the working area of the said premises was found occupied by another firm namely M/s. Hindustan Ayurveda & Medical Research. A detailed observation report in this regard has been given by the raiding party to the police which is appended with the original complaint.

4. That during inspection, the accused was found in possession of 10 ton Hemp. On asking, accused had produced document granting his permission for possession of 35 tone Hemp annually and 12 ton Hemp at one time possession limit for manufacturing ayurvedic medicines.

In search of the store of the accused persons 67.05 Kg of Hemp Extract (Ghan) was found, for which the

accused could not tender any explanation. Neither he produced any permission letter for processing and possessing this huge quantity of Ghan. Whereas according to instructions accused must keep the licence and any certificate of renewal in force on the approved premises so that it could be produced at the time of inspection.”

Learned counsel for the petitioner has further argued that, in fact, as per the report submitted by the complainant, it is apparent that when the inspection was carried out, resin was separated from Cannabis ("**Hemp**") by way of a process under Section 2(x) of the Act and the petitioner was holding all the valid licenses for manufacturing and sale of Ayurvedic and Unani medicines from 02.06.2020 to 01.06.2025, and even as license was granted under the Drugs and Cosmetics Rules.

(n) The learned counsel contended that the report on complaint itself is in sharp contest to the allegations in the FIR as on one side, the FIR is registered on mere allegations that the petitioner could not produce any license at the time of inspection whereas to the contrary, it is stated in report that the petitioner had license to store "**Hemp**" ("**Bhang**"). Therefore, the FIR registered on false ground is liable to be quashed.

(o) Learned counsel for the petitioner has next referred to the Memo dated 28.12.2020, issued by the Excise and Taxation Commissioner, Haryana, Panchkula, while granting Druggist License in Form 24 under Rule 74 of the Haryana Narcotics Drug and Psychotropic Substances Rules, 1985, to the firm of the petitioner. The

operative part of the same, reads as under:-

“As recommended by you, a license in form 24 in favour of M/s. World of Hemp Global Pvt. Ltd., Plot No.1796, 2nd Floor, HSIIDC, Rai Sonepat is granted under rule 74 of the Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985 for the remaining period of current financial year 2020-21 for the possession of 35 Ton annually hemp and 12 Ton hemp as one time possession limit for manufacturing ayurvedic medicine on the basis of valid drug licence and recommendation issued by State Licensing Authority, Directorate of AYUSH Department, Haryana, Sector – 3, Panchkula. It may be delivered to the applicant under proper receipt.”

Learned counsel for the petitioner has further contended that since the petitioner was granted permission to keep **“Hemp”** for manufacturing of Ayurvedic medicines, the impugned FIR has been registered on incorrect facts that the petitioner could not produce any license at the spot. It is also submitted that the FIR has been registered in a haste despite the fact that the petitioner has shown all the licenses and the complainant, who is an employee of the Directorate of AYUSH Department Haryana, could have verified the same from the Head Office, as to whether the license granted to the petitioner for manufacturing of Oil is valid or not.

(p) Learned counsel for the petitioner has also submitted that Rule 158(b)(ii)&(iv) of the Drugs and Cosmetics Rules, define **“Hemp”** extract **“Ghan”** i.e. extract of a medicinal plant. Section 158(b)(ii)&(iv) of the Drugs and Cosmetics Rules, reads as under:-

158(B) Guidelines for issue of license with respect to Ayurveda, Siddha or Unani drugs.- I. (A). Ayurveda, Siddha Unani Medicines under section 3(a):- Ayurveda, Siddha or Unani drugs includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, and manufactured exclusively in accordance with the formulae described in the authoritative books of Ayurvedic, Siddha and Unani Tibb system of medicine, as specified in the First Schedule;

(B). Patent or Proprietary medicine under section 3(h);

(i) In relation to Ayurvedic, Siddha and Unani Tibb system of medicine of all formulations containing only such ingredients mentioned in the formulae described in the authoritative books of Ayurveda, Siddha or Unani Tibb system of medicines specified in the First Schedule, but does not include a medicine which is administered by parenteral route and also a formulation included in the authoritative books as specified in clause (a);

(ii) Balya/Poshak/Muqawi/Unavuporutkal/positive health Promoter formulations having ingredients mentioned in books of First Schedule of the Drugs and Cosmetics Act and recommended for promotional and preventive health.

(iii) Saundarya Prasadak (Husane afza)/Azhagh-sadhan formulation having ingredients mentioned in Books of First Schedule of the Drugs and Cosmetics Act and recommended for oral, skin, hair and body care.

(iv) Aushadh Ghana (Medicinal plant extracts - dry/wet) extract obtained from plant mentioned in books of First Schedule of the Act including Aqueous or hydro-alcohol.

Under Schedule First of the 1940 Act, names of Ayurvedic medicine formation books are provided.

It is further argued that it is defined that “**Ghan**” is required for manufacturing of Oil as it is own case of the complainant, as per the license dated 15.06.2022, a condition was laid that the same will be used only for manufacturing Oil, etc. It is, thus, submitted that the petitioner has been falsely implicated in this case and his entire business is ruined as before the start of the business, he has been implicated in the present false FIR.

Learned counsel for the petitioner has also submitted that even the complainant has failed to follow the procedure as prescribed under the NDPS Act. It is also argued that the complainant being District Ayurvedic Officer along with the Drug Controller Officer, Ambala/Sonepat, visited/inspected the premises of the petitioner and took away 67 Kgs of “**Hemp**” (i.e. **Bhang ka Ghan**) by treating it to be a narcotic substance and then, sent an information to the Police Station for registration of the FIR under Section 20 of the NDPS Act. It is also submitted that the entire produce under the NDPS Act is given a by-pass as in case of inspection or in case of suspecting any incriminating recovery or even in case of actual incriminating recovery, at the first instance, an information was required to be sent to the Police Station so that a competent police officer authorized under the NDPS Act, could conduct the investigation under the NDPS Act and in such eventuality, the petitioner could have shown all the licenses to him. It is further submitted that the recovery was effected from the premises of the petitioner and therefore, the provision of Sections 42 and 43 of the

NDPS Act have been completely violated.

(q) Counsel for the petitioner has further argued that under Section 3(e) of the Drugs and Cosmetics Act, 1940, *Inspector* means –

(e) —Inspector means— (i) in relation to 9 [Ayurvedic, Siddha or Unani] drug, an Inspector appointed by the Central Government or a State Government under section 33G;”

Counsel for the petitioner has also submitted that further under *Section 33.G* of the Drugs and Cosmetics Act, 1940, it is provided as under:-

“33G. Inspectors.—(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him and the conditions, limitations or restrictions subject to which such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the manufacture or sale of any drug shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him may specify in this behalf.”

Counsel for the petitioner has further contended that the complainant Dr. Shashi Kant Sharma, was appointed as an Inspector only under the Drugs and Cosmetics Act, 1940, in terms of Section 3(e) read with Section 33.G of the Drugs and Cosmetics Act, 1940, relating to the Ayurvedic, Siddha, Unani drug manufacturing license granted to the petitioner.

Counsel for the petitioner has also submitted that the complainant has, in fact, while registering the impugned FIR has transgressed the powers under Section 42 of the NDPS Act, which provide as under:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may

furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset

and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]

Counsel for the petitioner has also argued that under Section 42 of the NDPS Act, the complainant being an Ayurvedic Medical Officer is not a person authorized by the State Government either by a general or special order and therefore, he was only competent to carry out the inspection under the Drugs and Cosmetics Act and in case of any violation under the NDPS Act, the complainant was required to send information to a competent officer and was not competent to take in possession, the recovered cannabis resin and take it away from the premises while making a request to the SHO for registration of the FIR.

Counsel for the petitioner has relied upon the Constitutional Bench judgment of the Hon'ble Supreme Court in ***“State of Punjab vs Baldev Singh”, 1999(3) RCR (Criminal) 533***, wherein the Hon'ble Supreme Court with regard to the powers of an empowered officer or a duly authorized officer acting on a prior information to search a person has made the following conclusion:-

“54. On the basis of the reasoning and discussion above, the following conclusions arise :

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the concerned person of his right under Sub-section (1) of Section 50 of being taken to the

nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing;

(2) That failure to inform the concerned person about the existence of his right to be searched before a Gazetted Officer or a Magistrate would cause prejudice to an accused;

(3) That a search made, by an empowered officer, on prior information, without informing the person of his right that, if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act;

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under

cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial;

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but, hold that failure to inform the concerned person of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law;

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of

the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search;

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

(9) That the judgment in Pooran Mal's case cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search;

(10) That the judgment in Ali Mustaffa's case correctly interprets and distinguishes the judgment in Pooran Mal's case and the broad observations made in Pirthi Chand's case and Jasbir Singh's case are not in tune with the correct exposition of law as laid down in Pooran Mal's case.”

Counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in ***“Tofan Singh vs State of Tamil Nadu”***, 2021(4) SCC 1, wherein the following observation is made:-

“The NDPS Act is a comprehensive legislation which makes provisions for exercising control over narcotic drugs and psychotropic substances, at the heart of which is the power vested in various officers to investigate offences under the Act, so as to prevent and punish the same against offenders being, inter alia, organised gangs of smugglers who indulge in what is considered by Parliament to be a menace to society. The preamble to the NDPS Act itself refers to the Act being a “stringent” measure to combat the menace of crimes relatable to drugs and psychotropic substances. Given the stringent nature of the NDPS Act, several sections provide safeguards so as to provide a balance between investigation and trial of offences under the Act, and the fundamental rights of the citizen. Several presumptions are also made under the NDPS Act in which the burden of proof is reversed, now being on the accused. They are all to be found in three sections – Sections 35, 54 and 66. That the NDPS Act is predominantly a penal statute is no longer res integra. Given the stringent provisions of the NDPS Act, together with the safeguards mentioned in the provisions discussed herein, it is important to note that statutes like the NDPS Act have to be construed bearing in mind the fact that the severer the punishment, the greater the care taken to see that the safeguards provided in the statute are scrupulously followed. Where a statute confers such drastic powers and punishments as the NDPS Act, scrupulous compliance with the statutory provisions must be insisted upon, and substantial compliance therewith will not be enough.”

Counsel for the petitioner has thus, submitted that neither scrupulous nor substantive compliance was made by the complainant was made and therefore, no presumption can be drawn against the

petitioner under Section 35 and 54 of the NDPS Act.

(r) Learned counsel for the petitioner has further contended that the manner in which the FIR has been registered would reflect that no fair investigation from the point of view of the accused as guaranteed as a constitutional right under Article 21 of the Constitution of India, was conducted. It is also submitted that a fair investigation postulates that the procedure provided under the NDPS Act should be followed especially in view of stringent provision under the Act, in order to rule out the possibility of bias or predetermined conclusion from the complainant.

(s) Learned counsel for the petitioner has next argued that from the bare perusal of the FIR, in the light of all the valid licenses available with the petitioner, who was at the stage of starting his manufacturing unit, no presumption of culpable mental state could be derived under Section 35 of the NDPS Act. Section 35 of the NDPS Act, reads as under:-

“35. Presumption of culpable mental state. 80

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. In this section culpable mental state includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond

a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

Learned counsel for the petitioner has further submitted that on a plain reading of Section 35 of the NDPS Act, it is apparent that though it raises a presumption as to knowledge of culpable mental state of possession of illicit narcotic articles, however, nothing is stated in the FIR that the petitioner was having any culpable mental state of keeping any intention, motive or knowledge except that the recovery effected from the premises of the petitioner was a raw material, to be used for the preparation of Ayurvedic medicines.

(t) Learned counsel for the petitioner has also submitted that even under Section 54 of the NDPS Act, the petitioner has satisfactorily proved that under a valid license, he was holding the **“Bhang ka Ghan”** as raw material and therefore, the prosecution of the petitioner is nothing but misuse of the process of law. Section 54 of the NDPS Act, reads as under:-

54. Presumption from possession of illicit articles.

— In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any

process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.

(u) Learned counsel for the petitioner has next submitted that from the bare perusal of the FIR, the prosecution has failed to discharge the initial burden that the petitioner was keeping the recovered **“Bhang ka Ghan”** in an illegal manner and therefore, no presumption can be drawn against the petitioner in terms of Section 35 or 54 of the NDPS Act as there was no culpable mental state of the petitioner.

Reliance is also placed upon the judgment **“Bhola Singh vs State of Punjab”**, 2011 (11) SCC 653, wherein while relying upon an earlier judgment in **“Noor Aga vs State of Punjab”**, 2008(16) SCC 417, the Hon’ble Supreme Court has held as under:-

“11....it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word ‘knowingly’, and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant, no presumption under Section 35 can be drawn. The only evidence which the

prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others."

(v) Learned counsel for the petitioner has further argued that it is a common practice amongst the rival manufacturers, who were already into a trade, whereas a new person is trying to set up a parallel industry, the rivals will use all the loopholes to prevent a new person entering a similar trade and in this process, the complainant under a hidden agenda has falsely implicated the petitioner in the impugned FIR, who has already lost his entire manufacturing business even before it start as he has suffered huge losses as even he had raised a loan from the financial institution to set up the industry.

(w) Learned counsel for the petitioner has, next, argued that as per the status report submitted by the State along with the FSL report and other documents, it is admitted that even the State Licensing Authority, Directorate of AYUSH Department, Haryana, vide its letter dated 04.05.2020 again, reiterated that the license was granted to the firm of the petitioner on 11.03.2022 for Oil, to be used externally and "Ghan" as defined under the Drugs and Cosmetics Rules, is required and not the resin.

(x) Counsel for the petitioner has also relied upon a judgment of this Court in "***Sohan Singh vs State of Punjab and others***", 2015(35) RCR (Criminal) 181, wherein while relying upon the judgment in ***Arjun Singh's case (supra)***, this Court has quashed the

FIR.

Similar view has been taken in another judgment “***Sunil Kumar vs State of Punjab and others***”, 2017 SCC (Online) 4881, wherein again this Court has quashed the FIR on the ground that the recovery was of a manufactured drug and the accused was having a valid license for the period when the recovery was effected. It was also held in this judgment that if there was any violation or breach of license at the most it entails all the Drugs Act and its Rules framed thereunder and prosecution under the NDPS Act is misuse of process by the authorities, the FIR was accordingly quashed in the light of the judgment of “***State of Haryana vs Bhajan Lal***”, 1991(1) RCR (Criminal) 383. The operative part of the said judgment, reads as under:-

“Similarly while discussing the ambit of Section 482 Cr.P.C. and cautioning the Courts below, the Hon’ble Supreme Court in ‘State of Haryana v. Ch. Bhajan Lal and others’ 1991(1) RCR (Criminal) 383 has laid down a proposition that the jurisdiction under Section 482 of the Cr.P.C. has to be exercised sparingly and with circumspection and that too in the rarest of the rare cases and that the Courts will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice; and has laid down seven kinds of cases where such a power should be exercised, which read as follows:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken

at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) 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.

19. Precisely, coming back to the present case, the very documentary evidence which is totally not refuted by the State and rather is there in their stand during the course of arguments that the documents produced to the department in question shows and undisputedly brings forth that the very allegations on the face of it contained in the FIR do not disclose it to be a cognizable offence justified for prosecution and even evidence so collected in support do not disclose commission of any offence triable under the NDPS Act and if at the most there is violation, the same is under the Drugs Act or the Rules framed thereunder for which offence is not cognizable and only a complaint lies, and that too by the Drugs Inspector, if so necessitated. Thus, to the mind of this Court, the criminal proceedings so initiated are an outcome of manifest mala fide and maliciously instituted to undo and circumvent and encroach upon the powers of the authorities to proceed under the Drugs Act and which has come about and taken cognizance of even by the present regime in the State that such like false implications needs to be curbed as it is leading to social malady, unnecessary and undesirable provocations affecting the very administration of justice by the State.

20. In what has been detailed and discussed above, the very registration of the FIR and initiation of prosecution against the petitioner certainly is nothing but totally an outright misuse of the process of the Court and needs to be curbed with a heavy hand thereby quashing the FIR and consequently the proceedings arising therefrom against the petitioner under the NDPS Act.”

Counsel for the petitioner has also relied upon another judgment in **“Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai vs State**

of Gujarat and others”, 2017(9) SCC 641, wherein it is held that the High Court in its inherent power has wide ambit and plenitude to secure the ends of justice or to prevent abuse of process of any Court.

In reply, counsel for the State could not dispute the facts that the petitioner is holding a license from 02.06.2020 till 01.06.2025, issued by the State Licensing Authority, Directorate of AYUSH, Haryana, wherein subsequent license was granted for manufacturing of additional medicines also on 11.03.2022 and permission was granted for formulation of Oil with a note ***“Only for external use, no OTC medicine use.”***

Counsel for the State also could not dispute that even the Excise Department has issued a license under the Drugs and Cosmetics Act to the petitioner and even the Narcotic Commissioner has issued a license to the petitioner to keep and store **“Hemp”**. It is further submitted that during the investigation all the e-bills produced by the petitioner have been duly verified from Ravinder Chaudhary resident of Rurki, as well as his license in form ID-15 for sale/supply of **“Hemp”** to the petitioner against money through e-way bill, however, it is argued that the investigation is still going on, though, the FSL report has been received.

Counsel for the State has also submitted that when the spot was visited, the petitioner could not produce the bills/licenses and therefore, the complainant i.e. District Ayurvedic Officer sealed the articles and brought it to be Police Station for registration of the FIR. It is further argued that though the percentage is not given, however, the prosecution can apply to the Court for re-evaluation of the sample.

In reply, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***“Madhavrao Jiwajirao Scindia vs Sambhajirao Chandrojirao Angre”***, 1988(1) SCC 692, wherein it has been held as under:-

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

Similar view is taken by this Court in ***“Monishankar Hazra and another vs State of Haryana and others”***, passed in CRM-M No.6692 of 2022, decided on 16.03.2022 wherein it has been observed as under:-

“70. The Hon'ble Supreme Court of India in “R Kalyani vs. Janak C. Mehta” reported as 2009 (1) SCC 516 has held as under:

“Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

3. First and second respondent approached

the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004. Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend:

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorize the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

“6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its

language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court.”

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

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A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was incharge of the affairs of the company and responsible to it, all the Ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. V. State of Haryana [(1989) 4 SCC 630], this Court held : “9. But we are concerned with a criminal liability under penal provision and not a civil” liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners

liable for the offence whether they do business or not.”

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27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.

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30. The appeal is dismissed with the aforementioned observations.”

A perusal of the said judgment would show that the High Court had, in a petition under section 482 Cr.P.C., quashed the FIR without the investigation having been completed and the said order was upheld by the Hon’ble Apex Court qua the persons who had filed the petition under Section 482 of the Code.

Relief:

71. Keeping in view the eight grounds, as have been detailed in the preceding paragraphs and the facts and circumstances of the present case and the ratio of law laid down in the plethora of judgments referred to hereinabove, both the petitions i.e., CRM-M-6692/2022 and CRM-M 6698/ 2022 are allowed and the impugned order dated 15.12.2021 is set aside and FIR no.508/2021 dated 23.12.2021 registered under Sections 120B, 406, 409, 420, 465, 467, 468 and 471 of the IPC at Police Station Sector 5, Panchkula and all the subsequent proceedings arising therefrom, are quashed.

It is, however, clarified that the setting aside of the impugned order and quashing of the FIR and the subsequent proceedings as well as the observations made in the present case would not affect the proceedings / complaint which is pending before the Lokayukta, Haryana and also the proceedings pending before the

Rohini Courts in New Delhi arising out of the FIR no.419 dated 18.08.2017 registered at Police Station Prashant Vihar, Delhi which had been registered in pursuance of the application dated 07.06.2017 filed under Section 156(3) Cr.P.C. by Respondent no.2 in the Court of Chief Metropolitan Magistrate, Rohini Courts, New Delhi.”

Learned counsel for the petitioner has submitted that it is held by the Co-ordinate Bench of this Court that even during the investigation, if no case is made out, then FIR can be quashed.

Learned counsel for the petitioner has next relied upon the judgment passed by the Hon'ble Supreme Court in ***“Thana Singh vs Central Bureau of Narcotics”***, 2013 (2) SCC 590, wherein it has been held that the NDPS Act itself does not permit resampling or retesting of samples and therefore, the F.S.L. report in absence of giving percentage is not admissible.

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

(a) The petitioner is a young Entrepreneur, who incorporated a Company in the year 2018 and was granted certificate of Start-up in the year 2019 by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, for a period of 10 years w.e.f. 13.02.2019. Thereafter, the State Licensing Authority (ASU), Directorate of AYUSH, Haryana, Panchkula, vide license issued in Form 25-D under Rule 154 of the Rules of

1945, granted license to the petitioner till 01.06.2025, for manufacturing of Ayurvedic/Unani/Siddha medicines and thereafter, he was granted further permission/license for manufacturing of additional medicines and last one was granted on 11.03.2022. The petitioner then, started setting up of a manufacturing unit and in order to start up the manufacturing of Ayurvedic medicines had purchased “Bhang Leaves” (“Hemp”) as raw material, after the Narcotic Commissioner of India, allotted a quota of 35 tonnes (with one time possession limit of 12 tonnes) vide letter dated 14.08.2020. In the meantime, the petitioner was also granted the Druggist license by Excise and Taxation Commissioner, Haryana, under Rule 74 of the Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985 for possession of 35 tonnes of “Hemp” and 12 tonnes of “Hemp” as one time possession limit.

It is only thereafter, the petitioner purchased “Hemp” (Bhang leaves) from an authorized distributor in U.P. on payment of money against e-bills and when he was preparing the raw material for the formulation of Ayurvedic medicines, the complainant inspected the premises and registered the FIR.

The only allegation in the FIR is that the petitioner has prepared “Bhang ka Ghan” by Hemp process and could not produce any license for the same.

On the face of it, the FIR is registered without verifying the various licenses issued to the petitioner as subsequently, the complainant himself has given a certificate certifying that the petitioner was having a valid license and the only objection was that the quantity was in excess.

In view of the above, the registration of the FIR against the petitioner is an act of oppression as immediately before he could start-up his manufacturing of Ayurvedic/Unani/Siddha medicines after taking all the relevant licenses and had prepared only raw material for the same purpose, the present FIR was got registered by the District Ayurvedic Officer, who was not competent under Section 42 of the NDPS Act and in that process, the manufacturing unit of the petitioner was closed despite the fact that it took 03 years to obtain all the relevant licenses, he spent huge amount on setting up of the manufacturing machinery by raising loans from the financial institutions.

(b) The complainant, being the District Ayurvedic Officer, though, was competent under Section 33.G of the Drugs and Cosmetics Act, being an Inspector as defined under Section 3(e) of the Drugs and Cosmetics Act, to carry out the inspection of the premises of the petitioner but it is nowhere mentioned in the FIR that he was a competent person under Section 42 of the

NDPS Act. The complainant is not defined as an officer under Section 42 of the NDPS Act and there is no special or general notification by the Centre or State Government, appointing him as an authorized officer under Section 42 of the NDPS Act.

In all the complaints/FIRs by police or the Narcotic Commission Bureau, the complainant himself define as a duly appointed officer under the NDPS Act. Thus, the complainant transgressed the powers under the NDPS Act, which vitiates the entire process of recovery of the alleged substance from the premises of the petitioner.

It is held by the Hon'ble Supreme Court in Tofan Singh's case (supra) that the NDPS Act is a comprehensive legislation and has stringent provision together with safeguards mentioned in the Act itself and therefore, the scrupulous compliance with statutory provisions must be insisted upon and substantial compliance thereof will not be enough. In the instance case, on a bare perusal of the FIR, not even substantial compliance was made by the complainant as he himself acted as an authorized person under Section 42 of the NDPS Act, while taking in possession of the "Bhang ka Ghan" ("Resin Hemp"). Even if, the complainant has any doubt about any narcotic substance, he was required to immediately inform a competent police officer under

the NDPS Act, who would have visited the premises and by following the procedure register the FIR but no such procedure is followed.

(c) The recovery i.e. “Bhang ka Ghan”, (“Hemp Resin”) as reflected in the FSL report also is not included in the definition of Narcotics as held by this Court in Arjun Singh’s case (supra), by Bombay High Court in Madhukar’s case (supra), by Karnataka High court in Roshan Kumar Mishra’s case (supra), by Allahabad High Court in Samid’s case (supra) and by Rajasthan High Court in “Manjeet’s case (supra)” wherein it has been held that Section 2(iii) of the NDPS Act defines “Cannabis Hemp” as Charas or Ganja or any mixture with neutral material and the term “Bhang” i.e. Cannabis leaves, is not included in the definition. Even otherwise, the petitioner was granted a valid license by the Narcotic Commissioner of India, to keep in possession 35 tonnes of Cannabis leaves and therefore, the petitioner, who has purchased the raw material in terms of the license cannot be held liable for any such violation as “Bhang” is not included in the definition of Narcotics in view of the aforesaid judgments.

The term “Ghan” or “Hemp” is defined under Rule 158(B)(ii)&(iv) of the Drugs and Cosmetics Rules, as an extract of medicinal plant. Sub-rule (iv) defines Aushadh Ghana as medicinal plant extract dry/wet as

extracted from a plant mentioned in the books of First Schedule of the Act including Aqueous or hydro-alcohol.

Needless to say that in all the licenses granted to the petitioner, the names of Ayurvedic medicines formation books which give category in each individual medicines, could fall in the First Schedule of the 1940 Act and therefore, the “Hemp Resin” in wet form recovered from the petitioner was, in fact, “Hemp” (“Ghan”) as defined under Rules 158(B)(ii)&(iv) of the Drugs and Cosmetics Rules, is not covered under the NDPS Act.

(d) As per the FSL report, the sample is found to be containing Tetrahydrocannabinol forming part of “Cannabis Resin”.

As per the Working Procedure Manual issued by the Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, at 7.2.5., a test is provided for differentiating between “Bhang”, “Ganja” and “Charas”, according to which, different colours of 03 substances are made out, however, the FSL report is silent about the same.

Even otherwise, it is held in Roshan Lal’s case (supra) that as per Parikh’s Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, the contents of Tetrahydrocannabinol, is 15% in case of “Bhang”, in the case of “Ganja” it is about 25% and in

case of “Charas” it is between 25% and 40%, therefore, the presence of Tetrahydrocannabinol, is there in all the 03 substances i.e. Bhang, Charas and Ganja, however, it is the percentage which makes difference.

A perusal of the FSL report would show that no such percentage is given and it is own case of the prosecution that the recovered Resin is an extract i.e. “Bhang ka Ghan” and therefore, mere presence of Tetrahydrocannabinol, will not make it a narcotic substance even if extracted out of the Cannabis leaves i.e. “Bhang”.

(e) The argument raised by counsel for the State that the percentage can be verified by re-testing or re-sampling from the FSL, is without any substance as it has been held by the Hon’ble Supreme Court in Thana Singh’s case (supra) that there is no provision under the Act for re-testing or re-sampling of the sample and therefore, on the face of it, the contents as per FSL being an extract of “Bhang” i.e. “Bhang ka Ghan” is not covered under the NDPS Act.

(f) The affidavit of the complainant submitted before the Additional Sessions Judge in the collateral proceedings would reveal that the allegation was that the petitioner was found in possession of 10 tonnes of “Hemp”, which was exceeding the limit, for which he could not produce any license. It is undisputed that the

petitioner was holding all the valid licenses till 01.06.2025.

In view of the judgment of Co-ordinate Bench of this Court in Sunil Kumar's case (supra), in case the quantity of the "Resin" was found to be more than the authorized limit of the license, it can only be a violation under the Drugs and Cosmetics Rules and not under the NDPS Act.

(g) From the bare perusal of the FIR, it is apparent that before registration of the FIR, no fair investigation from the point of view of the accused as guaranteed as a constitutional right under Article 21 of the Constitution of India, was conducted. As noticed above, the complainant not being an authorized person under Section 42 of the NDPS Act, could not have effected the recovery as he could only call the competent officer at the spot, who may, on verification of all the licenses proceed further for taking or not taking action.

(h) Since, the petitioner is holding the valid licenses, therefore, no presumption of culpable mental state under Section 35 of the NDPS Act can be drawn against the petitioner.

Similarly, the recovery of "Bhang ka Ghan", from the premises of the petitioner for which he was holding a valid license, no presumption under Section 54 of the NDPS Act, can be drawn as the material recovered was

part of a process as per Section 2 (viia) and (x), towards the manufacturing of an Ayurvedic drug for which the petitioner was having a valid license and therefore, merely because the recovery was effected from the premises of the petitioner in an illegal manner, no adverse presumption can be drawn against the petitioner under Section 35 or 54 of the Act, as there was no culpable mental state of the petitioner to commit such offence as apparent from the bare perusal of the FIR.

In view of the Constitutional Bench judgment of the Hon'ble Supreme Court in Baldev Singh's case (supra), it is held that an accused is entitled for a fair investigation and violation under Section 50 of the NDPS Act would render the trial unfair. It is also held in this judgment that a presumption under Section 54 of the NDPS Act, can only be raised if the provisions of the Act are followed.

Further, it has been held by the Hon'ble Supreme Court in Bhola Singh's case (supra), that in the absence of any evidence regarding culpable mental state of an accused, no presumption under Section 35 of the Act, can be drawn when the petitioner was possessing all the licenses, therefore, no such presumption can be drawn even in the present case.

(i) Further in view of the judgment of the Co-ordinate Bench of this Court in Sunil Kumar's case

(supra) wherein the FIR was quashed holding that the recovery was of manufacturing drug and the accused was having a valid license for the period when the recovery was effected, the case of the petitioner is squarely covered by this judgment as even in case of the petitioner, firstly, the “Bhang ka Ghan” is not covered under the Act and secondly, he was holding a valid license for the said period.

Similar view was taken by this Court in Sohan Singh’s case (supra) wherein the FIR was also quashed on the ground that mere possession of “Bhang” will not amount to an offence under the NDPS Act.

(j) The argument of counsel for the State that the case is still at the investigation stage is of no avail as it is held by the Hon’ble Supreme Court in Madhavrao Jiwajirao Scindia’s case (supra), as well as the judgment of the Co-ordinate Bench of this Court in Monishankar Hazra’s case (supra) that the High Court can exercise its inherent jurisdiction under Section 482 Cr.P.C., can be quashed even without waiting for the investigation to be completed.

Similar view is taken by the Hon’ble Supreme Court in Parbatbhai Aahir’s case (supra), wherein it has been held that the high Court in its inherent powers has wide ambit and plenitude to secure the ends of justice or to prevent abuse of process of law.

In view of what has been discussed hereinbefore, the present petition is allowed and FIR No.177 dated 25.04.2022, registered under Section 20 of the NDPS Act at Police Station Rai, District Sonapat and all other consequential proceedings arising therefrom, are quashed.

(ARVIND SINGH SANGWAN)
JUDGE

01.12.2022

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Whether speaking/reasoned	Yes/No
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Whether reportable:	Yes/No
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