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NEUTRAL CITATION NO: 2022/DHC/004131



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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CRIMINAL M.C. NO. 4280 of 2011

Between:-

1. **NAFE SINGH,
SON OF SHRI DHARAM SINGH,
R/O 568/26, AARYA NAGAR,
SONEPAT, HARYANAPETITIONER NO.1**
2. **RAJESH SHARMA,
SON OF SHRI KULDEEP SHARMA,
R/O MB-85, SHAKARPUR, DELHI-92
.....PETITIONER NO.2**
3. **AMIT KOHLI,
SON OF SHRI TILAK RAJ KOHLI,
E-15/22, KRISHAN NAGAR, DELHI-92
.....PETITIONER NO.3**
4. **DIWAKAR GUPTA,
SON OF SHRI RAM ASHREY, -
61, RAMPURI, KALKAJI, DELHI-19
.....PETITIONER NO.4**

*(Through: Shri K.T.S Tulsi and Shri N. Hariharan Senior
Advocates with Shri Amit Anand Tiwari, Advocate.)*

AND

NARCOTICS CONTROL BUREAU RESPONDENT

*(Through: Shri Subhash Bansal, Senior Advocate along with
Shri Shashwat Bansal, Advocate.)*

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Pronounced on : 10.10.2022

JUDGMENT

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1. This petition under Section 482 of the Cr.P.C. seeks to assail impugned orders dated 10.05.2011 and 26.07.2011 passed by Ld. Special Judge (NDPS), Patiala House, New Delhi, in Sessions case No. 129/8/08, whereby, the learned Special Judge has rejected the submissions of the petitioners for their discharge and proceeded to frame charges against them under Sections 22/23 read with Sections 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act).

2. The facts of the case are that on 05.05.2008, on receiving information by Narcotics Central Bureau (NCB) to the effect that a group of persons are involved in the illicit smuggling of prescription drugs, listed under the Schedule of the NDPS Act, search authorization under Section 41(2) of the NDPS Act was issued. At around 4:20 PM, a team of respondent/NCB started its operation and at 4:30 PM, NCB intercepted two persons, namely, Rajesh Sharma and Nafe Singh at Indraprasth Post Office, New Delhi. A bag was seized containing therein, 100 envelopes where 10,260 tablets of 'Diazepam', 'Alprazolam' and 'Phenobarbitone' (Phenobarbital) were found. Upon disclosure, during the investigation, the identity of other accused persons was ascertained and raids were conducted at the office and residence of other co-accused, where contraband was seized. All the accused were detained, except one, namely, Ashish Kumar, who is reportedly untraceable. On 06.05.2008, voluntary statements of all accused persons were recorded under Section 67 of the NDPS Act. The petitioners were produced before the learned Special Judge (NDPS) and were sent to judicial custody. Samples of seized tablets were sent to Central Forensic Science Laboratory, Hyderabad (CFSL). No adulteration or misbranding was found. On

01.11.2008, respondent/NCB preferred a complaint before the Special

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Judge against the petitioners for offences punishable under sections 21/22/23/24/27A & 29 of the NDPS Act. The petitioners were granted bail vide order dated 24.12.2008 and 07.01.2009. Between 25.02.2009 to 13.03.2009, three different detention orders were passed against the petitioners under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as PITNDPS). Writ petitions were preferred by the petitioners against the orders of detention.

3. On 06.05.2009, the Division Bench of this court allowed writ petitions being W.P.(CRL) No.326/2009 and W.P.(CRL) No.384/2009, setting aside the orders of detention, holding that export of drugs listed in the Schedule of NDPS Act is neither prohibited nor punishable under the NDPS Act or Rules. This court held that the prohibition only extends to the Psychotropic Substances mentioned in Schedule- I to the NDPS Rules and not to all Psychotropic Substances mentioned in the Schedule to the NDPS Act. The other writ petitions were also allowed on the same line. The SLP preferred by the NCB against the orders passed by the Division Bench of this court bearing SLP (CRL.) Nos. 18197-98/09, was dismissed at the admission stage. On 29.09.2010, the petitions for cancellation of bail of the petitioners at the instance of NCB were also dismissed by the learned Special Judge (NDPS).

4. On 10.05.2011, the learned Special Judge (NDPS) rejected the prayer of petitioners for their discharge from the offence alleged against them. Consequently on 26.07.2011, charges for the offence as stated above were framed. The petitioners have pleaded that they have not committed any offence and the entire procedure adopted by the NCB and the learned Special Judge (NDPS), is *de hors* the settled

legal position. The petitioners are, therefore, seeking for quashmer
impugned orders on various grounds.

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5. Shri K.T.S. Tulsi and Shri Hariharan, learned Senior Counsel and Shri Amit Anand Tiwari, Advocate, appeared on behalf of the petitioners and they made the following submissions:

(i) Scheme of Section 36-A(1)(d) of the NDPS Act, does not permit two modes of taking cognizance. Either cognizance can be taken on police report by following the procedure for trial of warrant cases in cases instituted on a police report or upon a complaint made by an authorized official of the Central or State Government, in terms of the procedure prescribed by Chapter XIX of the Cr.P.C.

(ii) Section 36-A(1)(c) of the NDPS Act, permits the Special Court to exercise the powers of a Magistrate. This provision has the effect of making Chapter XIX of the Cr.P.C. applicable to the Special Judge while taking cognizance of the offence under the NDPS Act.

(iii) The petitioners are being tried under Chapter XVIII of the Cr.P.C., which is not the procedure established by law and therefore, fundamental rights guaranteed under the Constitution for a fair trial are being violated.

(iv) The statements of the petitioners recorded under Section 67 of the NDPS Act cannot be used as confessional statements in trial of an offence under the NDPS Act.

6. Elaborating the submissions, learned counsel argued that in a case instituted otherwise than, on a police report, the Magistrate is required to proceed to hear the prosecution and take all such evidence as may be produced in its support, as mandated under Section 244 of the Cr.P.C. By virtue of Section 36-A(1)(a) of the NDPS Act, all cases punishable with imprisonment for a term of more than 3 years are triable only by the Special Court, under the NDPS Act, therefore, such



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cases are warrant cases, for the purposes of the Cr.P.C. In the instant case, the jurisdiction of the Special Judge was invoked by the respondent by way of a complaint and therefore, without there being any evidence as required under the law, cognizance could not have been taken. Once the respondent has consciously taken recourse to the mode of a complaint case, there was no occasion to depart from the said procedure. In the instant case, the prosecution did not adduce any evidence and cognizance has been taken, which would amount to miscarriage of justice. Since no witnesses were produced by the prosecution, therefore, adverse inference under Section 144 (g) of the Indian Evidence Act, 1872 has to be drawn to presume that the witnesses were inconvenient to the prosecution. It is submitted that in the instant case, the procedure laid down under Section 244 of the Cr.P.C. is not followed and therefore, the entire proceedings are vitiated. It is submitted that petitioner No.1, namely, Nafe Singh, was a Postal Agent and the allegation against him was that he used to obtain parcels of prescription drugs at the post office sent by petitioner No.3/Amit Kohli through petitioner No.2/Rajesh Sharma. Petitioner No.2 is the servant of petitioner No.3 and petitioner No.1 and petitioner No.2 were intercepted by the team of NCB and except for a statement under Section 67 of the NDPS Act, there is no material against petitioner No.3. Petitioner No.4/Diwakar Gupta is stated to be a partner of petitioner No.3 in M/s E-Destination India Pvt. Ltd. It is also argued that there has to be legally admissible material to frame charges, which is completely missing in the instant case.

7. Learned senior counsel referred to order dated 01.11.2008 passed by the Special Judge to indicate that even as per the understanding of the respondent/complainant, they were required to examine their witnesses and not only the list of documents was



submitted along with the complaint, but the list of witnesses was

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enclosed. While referring to an application filed by the complainant for grant of exemption from his examination, it is submitted that since the same was required as per law, therefore, an application was filed to exempt him.

8. Learned senior counsel placed reliance on various decisions in the cases of *Sunil Mehta v. State of Gujarat*¹, *Harinarayan G. Bajaj v. State of Maharashtra*², *Karnesh Kumar Singh v. State of U.P.*³, *Ajoy Kumar Ghose v. State of Jharkhand & Ors.*⁴, *Ashok Munilal Jain v. Asst. Director Enforcement Director*⁵, *Toofan Singh v. State of Tamil Nadu*⁶, *Suresh Budharmal Kalani v. State of Maharashtra*⁷, *State Of Karnataka v. L. Muniswamy & Ors.*⁸, *Sanjeev Chandra Aggarwal and Anr. v. UOI*⁹, *Pepsi Foods Ltd & Anr v. Special Judge Magistrate & Ors.*¹⁰, *Natwarlal Shankarlal Mody v. State of Bombay*¹¹, *L.K. Advani v. Central Bureau of Investigation*¹², *Shah Jethalalji v. Khimji M. Bhujpuria*¹³, *Ramniwas S/o Ambalal v. State of Madhya Pradesh*¹⁴, *K.L.Bhasin v. Sundar Singh*¹⁵, *Sanjit Bakshi v. State of NCT of Delhi & Anr.*; CRL.M.C 4177/2019 dated 19.05.2022 and *V. Sridharan v. State and Ors.*; CRL. O.P No. 28874/2019 was decided on 21.02.2020.

¹ (2013) 9 SCC 209

² (2010) 11 SCC 520

³ AIR 1968 SC 1402

⁴ (2009) 14 SCC 115

⁵ (2018) 16 SCC 158

⁶ (2021) 4 SCC 1: MANU/SC/0797/2020

⁷ (1998) 7 SCC 337

⁸ (1977) 2 SCC 699

⁹ (2021) SCC OnLine SC 1268

¹⁰ (1998) 5 SCC 749

¹¹ (1961) SCC OnLine SC 1

¹² 1997 (41) DRJ 274

¹³ (1974) 76 BomLR 270

¹⁴ 2021 SCC OnLine MP 3413

¹⁵ (1972) CrL LJ 371



9. Learned counsel appearing on behalf of the respondent/N

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submits that the instant petition is baseless and the same deserves to be dismissed. According to him, the impugned order has been passed strictly, in accordance with law and, therefore, at the stage of framing of charges, this court should not scrutinize the evidence available against the accused as the same would be the subject matter of the trial. He submits that the court concerned was not required to satisfy with the proof of allegation, rather it has to focus on the material and form an opinion as to whether there is a strong suspicion that the accused have committed an offence. The framing of charge is not the stage where a final test of guilt is to be applied. According to him, the NDPS Act, is a Special Statute which governs the law relating to narcotic drugs, psychotropic substances and controlled substances. The provisions of the Special Statute override the provisions of general provisions unless otherwise specifically provided therein. Section 36-A of the NDPS Act stipulates that notwithstanding anything contained in the Cr.P.C., an offence mentioned in Section 36-A is to be tried by special courts. For the trial of offences under the NDPS Act, the procedure contemplated under Chapter-XVIII of the Cr.P.C. i.e., Section 225 to 237 would be applicable. It is, therefore, submitted that Section 36-A(1)(d) of the NDPS Act, nowhere, stipulates the applicability of procedure in terms of Chapter XIX of the Cr.P.C. It is submitted that Section 36-A (1) (c) of the NDPS Act stipulates the exercise of the power of the special courts similar to the power of Magistrate exercisable under Section 167 of the Cr.P.C. It is further submitted that the law does not require to take evidence under Section 244 of the Cr.P.C. and the Special Judge is empowered to take cognizance of the offence under the NDPS Act on a complaint, without the accused being committed to it for trial. It is further



submitted that as per the mandate of Section 36-C of the NDPS .

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the provisions of the Cr.P.C. are only applicable as otherwise provided in the NDPS Act. Learned counsel further submitted that the court below has not committed any error. The Special Judge is empowered to take cognizance upon a complaint made by an officer of the Central or State Government or upon perusal of a police report of the facts constituting an offence under the NDPS Act. He places reliance on the various decisions of the Hon'ble Supreme Court, this High Court and other High Courts, in the matters of *Union of India & Anr. v. Sanjeev V. Deshpande*¹⁶, *Supreme Legal Aid Committee v. Union of India*¹⁷, *Vijay Madan Lal Choudhary & Others v. Union of India*¹⁸, *Samir Ganguli v. Intelligence Officer, Narcotic*¹⁹, *Bankadas Rambalak Das, Birendra v. State of Orissa*²⁰, *Yusuf Ismail Vohra v. UH Patel Intelligence officer*²¹ and *Harvin Singh @ Lovely v. State of Punjab*²²; the decision of the Patna High Court in the matter of *Satyanarayan v. Union of India*, CRL. Bail (SJ) 211 2005 dated 15.04.2011 and another judgment of the same high court in the matter of *Mahender Baith v. State of Bihar*, CRL. Appeal (SJ) 277 of 2010 dated 19.05.2011 and decision dated 04.06.2020 in the matter of *Smt. Rajni Goswami v. State (Govt of NCT)*, CRL. No 4606/18.

10. I have considered the submissions made by the learned counsel appearing on behalf of the parties and perused the record.

11. So far as the applicability of the provisions of the NDPS Act, in the instant case, is concerned, the issue is covered by the judgement of the Hon'ble Supreme Court in the matter of *Sanjeev v. Deshpande*

¹⁶ (2014) 13 SCC 1

¹⁷ 1994 6 SCC 731

¹⁸ 2022 SCC OnLine SC 929

¹⁹ 2005 CRL.L.J. 3276

²⁰ 1992 SCC OnLine Ori 215

²¹ 2003 4 GLR 345

²² 1999 CRL.LJ 3071

(*supra*), wherein in paragraph Nos.29 and 30, the Hon'ble Supr

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Court has held that the earlier decision in the matter of *State of Uttaranchal v. Rajesh Kumar Gupta*²³, wrongly, concluded that the prohibition contained under Rule 63 of the NDPS Rules is applicable only to those narcotics and psychotropic substances which are mentioned in Schedule 1 to the Rules and not to the psychotropic substances enumerated in the Schedule 2 of the NDPS Act. It is, therefore, seen that not mentioning the drugs in question in NDPS Rules would not absolve the petitioner from the rigour of the provisions of the NDPS Act as the drugs in question are admittedly mentioned in Schedule 2 of the NDPS Act. Hence not mentioning the name of the drugs in question in Schedule I of the NDPS Act, 1985 does not make any difference.

12. The NDPS Act has been enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances; to provide for the forfeiture of property derived from, or used in illicit traffic in narcotic drugs and psychotropic substances; to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith. Chapter IV deals with the offences and penalties. Section 36 of the NDPS Act provides for constitution of special courts and Section 36-A requires offences which are required to be triable by the special courts. Section 36-C stipulates to what extent the provisions of the Cr.P.C. would be applicable and Section 36-D deals with transitional provisions. In the instant case, Section 36-A, Section 36-C, Section 36-D, of the NDPS

²³ 2007 1 SCC 355

Act and Section 4 & 5, of the Cr.P.C. would have direct applicati

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The same are, therefore, reproduced as under:

“36A- Offences triable by Special Courts. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in their



behalf, take cognizance of that offence without the accused being committed to it for trial.

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(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days": Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.]”

Section 36-C- Application of Code to proceedings before a Special Court. –

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.



Section 36-D-Transitional Provisions.

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(1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), which is triable by a Special Court shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session: Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).

13. Section 4 & 5 of the Cr.P.C. is reproduced as under:

“4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

“5. Saving.

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”



14. By the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 amending Act No.2 of 89 the Central Legislation has made far-reaching changes in the NDPS Act. The amending Act came into force w.e.f. 29.05.1989. By the amending Act, the punishment prescribed under the newly added Section 31(A) is extended to the death penalty also. Section 36 came to be replaced by a new provision and Sections 36-A to 36-D were inserted for the first time. Only a Session Judge or an Additional Sessions Judge is eligible to be appointed as a Special Judge. Under Section 36-A, all offences under the Act shall be triable only by the special court constituted for the area in which the commission of the offence has taken place. This provision overrides the provision in the Cr.P.C. A close analysis of the NDPS Act and the provisions of the amending Act would reveal that before the introduction of the provisions by amending Act, the offences under the NDPS Act were triable by the ordinary court under the Cr.P.C. However, after the enactment of the Act, it was expected that speedy trials and harsh punishment would help in preventing and combating abuse of illicit traffic in narcotic drugs etc. Clause (d) of sub-Section 1 of Section 36-A, empowers, the special courts to take cognizance of an offence under the Act upon a police report or upon a complaint made by an authorized officer. Section 36-C extends the provisions of Cr.P.C. to proceedings before the special court, save as otherwise provided in the Act, so that where the Act does not make any specific provisions to the contrary, the special court may not be hamstrung and may lean on the provisions in the Cr.P.C. But then till the establishment of the special courts, provision had to be made to cover the transitional period to avoid the stalemate situation and hence, the need for Section 36-D was considered. On a confined reading of the provisions, it becomes clear



beyond any doubt that once a special court has been constituted for

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area or areas in which the offences are being committed, then notwithstanding anything contained in the Cr.P.C., the special courts alone will have jurisdiction and all other courts exercising jurisdiction prior to the constitution of the special courts will cease to have jurisdiction.

15. The provisions would further indicate that the special courts, upon perusal of a police report, of the fact constituting an offence under the act or upon a complaint made by an officer of the government concerned authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial. It is, thus, seen that a special court may take cognizance of an offence without the accused being committed to it for trial. In the case of ***Samir Ganguli (supra)***, the Calcutta High Court was considering the provisions of the NDPS Act in the context of the challenge being made by the petitioner in that case against the issuance of summoning order. A complaint case was initiated under the provisions of the NDPS Act by the Intelligence Officer of the respondent/NCB. A submission was made that since the complaint case was not instituted on the basis of a police report; and the same being a warrant case instituted otherwise than on a police report, the procedure laid down under Sections 244 to 247 of the Cr.P.C. should be followed. It was the grievance of the petitioner in that case that the learned Additional Sessions Judge, who was empowered to try the case under the NDPS Act, in absence of special courts, had not followed the procedure enumerated under Sections 244 to 247 of the Cr.P.C. The sole point, therefore, was to be considered by the Calcutta High Court as to whether or not the procedure relating to the trial of the warrant cases instituted otherwise than on police report as laid down under Section

244 to 247 of the Cr.P.C., is to be followed in that case under

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NDPS Act which was instituted on the basis of a written complaint filed by the Intelligence Officer, NCB.

16. It has been held therein that the non-obstante clause contained at the beginning of Section 36-A of the NDPS Act necessarily indicates that the procedure contemplated in the Cr.P.C. for trial of the offences under the NDPS Act, is not at all applicable and the procedure contemplated by the said Section for trial of the cases under the NDPS Act alone is applicable. The Calcutta High Court placed reliance on a full bench decision of the Orissa High Court in the case of **Banka das, Rambalak Das, Birendra v. State of Orissa**²⁴. It has, therefore, been held in paragraph No.8 of the said decision that for all practical purposes, the Court of Sessions is put on par with the special courts. It has also been held that the procedure for trial of warrant cases by the Magistrate laid down under Chapter XIX of the Cr.P.C. is not at all applicable to the trial of the cases before the special courts under the provisions of the Act.

17. Paragraph Nos.7 and 8 of the decision of **Samir Ganguly (supra)** are reproduced as under:

7. I have carefully considered the rival contentions made by the learned Advocates for the respective parties and the materials on record. There can hardly be any room for skepticism that the instant case under the Act is triable by Special Court and not by a Judicial Magistrate. Section 36 of the Act deals with constitution of Special Courts under the Act. Section 36-D(1) of the Act provides inter alia- that any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotro-pic Substances (Amendment) Act, 1988,

²⁴ 1993 CRI LJ 442



until a Special Court is constituted under Section 3, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session. So far as application of the Code of Criminal Procedure to proceedings before a Special Court is concerned Section 36-C of the Act provides inter alia that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions of the Special Court shall be deemed to be a Court of Session. The Court of Session during the absence of a Special Court is empowered to try cases during the transitional period and it should be deemed to be a Special Court having power under Section 36-A(1)(d) of the Act to take cognizance of the offence and there is no need for commitment for Court of Session to take cognizance of the offence committed under the Act. The non obstante clause contained in the beginning of Section 36-A of the Act necessarily indicates that the procedure contemplated in the Code for trial of the offences under the Act is not at all applicable and the procedure contemplated by the said section for trial of the cases under the Act alone is applicable. In this context reference can be made to a Full Bench Decision of Orissa High Court in Banka Das v. State of Orissa, reported in 1993 Cri LJ 442 on page 453 at para 15.

8. From the materials on record including the order impugned I find that since no Special Court for trial of N.D.P.S. cases had been constituted in the district of Hooghly at the relevant point of time, the learned Sessions Judge of the district who has been vested with the power to try cases under the Act must be deemed to be a Special Court having power under Section 36-A(1)(d) to take cognizance of the offence and for all practical purposes of the Court of Session is put on par with the Special Court. I find sufficient force in the contention raised by Mr. Singh on behalf of the opposite party that the procedure for trial of warrant cases by Magistrate as laid down under Chapter XIX of the Code of Criminal



Procedure is not at all applicable to trial of the cases before the Special Court under the provisions of the Act. Viewed in this perspective I find that the contention raised by Mr. Ghosh on behalf of the petitioner regarding applicability of the procedure for trial of warrant cases instituted otherwise than on police report, as laid down under Chapter XIX of the Code of Criminal Procedure to trial of the instant case before the Special Court under the Act is devoid of merit.

18. If the Full Bench decision of **Banka Das (supra)** relied upon by the Calcutta High court is seen, paragraph Nos. 14 & 15 thereof would also indicate that the Full Bench of Orissa High Court has also taken the same view holding therein that Section 36-A begins with a non-obstante clause and indicates that the procedure contemplated in the Code for the trial of the offence under the Act is not at all applicable and the procedure contemplated by the Section for the trial of the cases under the Act alone is applicable. Paragraph Nos. 14 & 15 are reproduced as under:

14. The stand of the petitioners primarily is that what is permissible to be done by the Court of Session is a 'trial', and therefore cognizance of the offence is not encompassed. In order to appreciate correctness of the submission, the object for which the statute has been enacted has to be kept in mind. The purpose and object of the enactment of the Act is to have a speedy trial of all offences thereunder. That is why the Special Courts are allowed to take cognizance of the offence, without there being a committal proceedings. The Court of Session empowered to try the case during the transitional period should be deemed to be a Special Court having power under section 36-A(1)(d) of the Act to take cognizance of the police report or upon a complaint made by an officer of the Central or State Government. Section 193 of the Code has no application as the entire trial is conducted in accordance with the provisions of the Act.



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15. It may be relevant here to refer to sub-sections (1) and (2) of section 4 and section 5 of the Code. Sub-section (1) of section 4 provides that all offences under the Penal Code, 1860 (in short, 'I.P.C. ') shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code. Sub-section (2) of the said section carves out an exception that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Saving provisions in section 5 lay down that ordinarily the Code will not affect any special law; any local law; any special jurisdiction or power; and any special form of procedure. Section 41, I.P.C. states what a 'special law' is. It means a law applicable to a particular subject. Therefore, on a plain reading of the preamble appended to the Act, it is clear that the same is a special law. As indicated supra, section 36-A begins with a non-obstante clause and indicates that the procedure contemplated in the Code for the trial of offences under the Act is not at all applicable and the procedure contemplated by the section for the trial of the cases under the Act alone is applicable.

The first schedule attached to the Code categorises the offences into two categories. The first category relates to offences under the Penal Code, 1860, while the second category relates to classification of offences under other laws. A reading of section 193 of the Code makes it clear that there are plausibilities or possibilities of a Court of Session taking cognizance of any offence as a Court of original jurisdiction, even in the absence of commitment by a Magistrate, and such legislative intention is culled out from the usage of the expression', 'Except as otherwise expressly provided by this Court or by any other law for time being in force... " Such a situation arises in case of trial of



an offence by a Court of Session under other laws. Section 209 of the Code prescribes that irrespective of the fact that a case is instituted on a police report or otherwise, there has to be commitment of a case to Court of Session, when offence is exclusively triable by it. The non-obstante clause in section 36-D is a reflection of the statutory intent that notwithstanding anything contained in the Code, a trial before a Court of Session which otherwise could not have proceeded without there being a commitment is not contemplated for trial of offenders in the Act in the Court of Session. Reference to section 36-B and 36-C also indicates that a Court of Session is put on par, for all practical purposes, with the Special Court constituted under the Act, and is a substitute for the Special Court during the transitional period. Sub-section (2) of section 36-D also throws some light. It provides that where cognizance has been taken by a Court of Session under sub-section (1) of the section, the cases shall be heard and disposed of by it without being transferred to a Special Court. The Kerala and the Madras High Courts have taken the view similar to the one indicated by me. (See *In the matter of State Circle Inspector of Excise, Cannur and others etc.*: 1992 CrL. L.J. 570; and *P.R. Muthu v. State*: 1992 (1) Crimes 1038). Provisions of section 36-D point out apparently the legislative intent that trial of offenders under the Act is to proceed by the Court of Session, notwithstanding anything contained in the Code. A trial under the Code cannot be undertaken by the Court of Session without there being a commitment. In order to indicate that such procedure is not contemplated during the transitional period also, the non-obstante clause has been suffixed. The non-insertion of such clause at the beginning of the section is also significant, and cannot be said to be without purpose. The avowed object of the Act is speedy trial of the offenders under the Act. The interpretation makes the provisions of section 36-D more meaningful and is in consonance with the objects of enactment of the statute. The irresistible conclusion is that there is no need for commitment for the Court



of Session to take cognizance of the offences committed under the Act. The contrary view expressed by the Division Bench in Bhagwan Singh's case (supra) is not correct.

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19. The Gujarat High Court in the matter of **Yusuf Ismail Vohra (supra)** also had an occasion to consider similar controversy. It has been held therein that opening clause of Section 36-C itself indicated that if a departure from the procedure prescribed for the Court of Sessions were to be made, it had to have been otherwise clearly proceeded in the Act. In the absence of any such provision indicating a departure from the procedure, the special court, be it a Court of sessions under the transitional provision or the special court constituted under Section 36, shall have to follow the procedure prescribed in chapter XVIII of the Cr.P.C. in the proceeding before such court. The provision of Section 193 of the Cr.P.C. cannot come in the way of such interpretation and application of the express provisions of the NDPS Act because of the express provision made in Section 36-A(1)(d) of the Act. The provision stands expressly excluded by the aforesaid opening clause of Section 36-C.

20. The High Court of Punjab and Haryana in the matter of **Harvin Singh @ Lovely (supra)** had an occasion to consider the decision of the Hon'ble Supreme Court in the matter of **Legal Aid Committees' case (supra)** and it has been held therein that under Section 209 of the Cr.P.C., the Magistrate has to consider whether from the **police/complainant** a case exclusively triable by Court of Sessions is made out, or not and if made out then he has to commit the case. Under Section 36-A(1)(d) of the NDPS Act after the beginning of the constitution of a special court, the special court is authorized to take cognizance of the offences under the NDPS Act without the accused being committed to it for trial. It has further been held that there arises



no question of Magistrate going through the exercise of comm
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proceedings on account of non-obstante clause Section 36-A(1)(d). All
offences under the Act become triable only by the Court of Sessions
till the provision for special courts came in statute book; and thereafter
by the special courts.

21. The Patna High Court in the matter of **Satyanarayan (supra)** was considering an appeal of the convict, who was convicted under Section 20 of the NDPS Act and was directed to undergo rigorous imprisonment for 10 years and also to pay fine. The case was that the accused therein, who was the driver of a vehicle, was arrested and he was also forwarded with the complaint petition to the court and was remanded to custody. Cognizance was taken and the accused was put on trial. The trial court was of the view that it need to proceed to record evidence before the charge that is evidence under Section 244 of Cr.P.C. Accordingly, charges were framed under various Sections of the NDPS Act and thereafter, the court proceeded to issue summons for cross-examination of the prosecution witnesses, as per the provisions of Section 246 of the Cr.P.C. Ultimately after examination of 05 witnesses, during the trial by adopting the same procedure, the trial court found the accused guilty therein. It was found therein that the entire process of conducting the trial was vitiated on account of not following the procedure applicable to the cases under the NDPS Act. It has been held that the special court has to be the Court of Sessions and the special court need not follow the procedure of the Cr.P.C. Paragraph Nos.5 & 6 of **Satya Narain (supra)** are reproduced as under:

5. The special court is constituted by Section-36 and the qualification of a Judge who could be appointed as a Judge of the Special Court is indicated by Section-36(3) of the Act which reads



that a person shall not be qualified for appointment as a Judge of Special Court unless he, immediately before such appointment, is a Sessions Judge or an Additional Sessions Judge. It may further appear that the Special Court has to be the court of Sessions as regards its functions and this is indicated amply by both the provisions of Section- 36-B and 36 of the N.D.P.S.Act. Thus, it could safely be concluded that a Special Court has always to be the court of Sessions and further that the provisions of the Cr.P.C. which may be applicable to trials before the court of Sessions has to be applied inasmuch as the Cr.P.C. has been made applicable in its entirety except where some special provisions have been made by the N.D.P.S.Act as may appear from Section 36 of the said Act.

6. Now coming to the provisions of the Cr.P.C., Chapter-XVIII of it relates to trial before a court of Sessions and provisions have been laid down as to how the trial before a court of Sessions has to be proceeded with. The provision of Chapter- XVIII may indicate that it does not contain any provision for recording of evidence before charge nor there could be any for cross-examination of a witness after framing of the charge. That provision is contained in Chapter-XXI as regards cases instituted otherwise than on police report. This was the fallacy in which the Judge who was trying the case, fell and, thus, carried out a trial under the procedures which were simply not applicable to that particular trial before him. He was a Judge manning the Special Courts and the Special Court was the court of Sessions and the trial had necessary to be proceeded as per the provisions of Chapter-XVIII Cr.P.C. Thus, what this court find is that the whole trial proceeding was vitiated on account of following wrong and inapplicable procedure to try the case. Due to the above account the judgment of conviction could never be sustained in appeal. It is a case in which the court has necessarily to pass an order of rep-trial by setting aside the judgment dated 27.01.2005. Accordingly, the judgment of conviction passed by Ist Additional Sessions Judge,



Muzaffarpur in Trial No.08 of 2004 is hereby set aside. The matter is remitted back to the Special Judge, Muzaffarpur for proceeding with the trial from the stage of framing of charges and by following the provisions of Chapter-XVIII of the Cr.P.C.

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22. It has also been held that the provision of Chapter XVIII would indicate that the same does not contain any provision for the recording of evidence before charge nor there could be any examination of a witness. It has been held that the provisions contained in Chapter XIX, as regards cases instituted otherwise than on police report, were not applicable. **Since the judge heading the special court was the Court of Sessions** and the trial had necessarily to be proceeded as per the provision of Chapter XVIII of the Cr.P.C. The Patna High court, therefore, set aside the entire conviction only on that ground.

23. The Patna High Court in another decision in the case of **Mahender Baith (supra)** has also taken the same view.

24. The Hon'ble Supreme court in the case of **Vijay Madan Lal Choudhary (supra)** also had an occasion to consider the provisions of the Prevention of Money Laundering Act, 2002. Under Section 43 of the same Act, there is a provision for special courts. The Hon'ble Supreme Court has held that provisions opens with a non-obstante clause which makes it clear that the dispensation provided therein is notwithstanding the 1973 Code relating to the matters provided therein, in relation to trials concerning offence of money laundering to be conducted by the special courts.

25. In view of the aforesaid discussion, this court is of the considered view that in the instant case, there would not be any applicability of Sections 244 to 247 of the Cr.P.C. as the said procedure under Chapter XIX of the Cr.P.C. is for the trial of warrant



cases by Magistrates instituted otherwise than on police report.

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instant case, no doubt is a case instituted otherwise than on a police report but the law requires that the same has to be tried by the special courts or by the Sessions Judge in absence of special courts. The procedure applicable for trial before a Court of Sessions under Chapter XVIII *i.e.*, from Sections 225 to 237 would alone have an application. It would be against the mandate of law if a Court of Sessions is asked to follow the procedure of a warrant case being followed by the Magistrate. Once a Court of Sessions' judge/special court has to try a particular offence, the same would necessarily have to be tried in accordance with Chapter XVIII and not in accordance with Chapter XIX of Cr.P.C.

26. The Hon'ble Supreme court in the matter of ***Toofan Singh (supra)*** had to consider various issues relating to the NDPS Act. The earlier decision in the case of ***Raj Kumar Karwal v. Union of India***²⁵ has also been considered and it has been held in paragraph No.140 in the case of ***Toofan Singh (supra)*** that the ***Raj Kumar karwal (supra)*** missed the importance of the non-obstante clause contained in Section 36-A (1), which makes it clear that the drill of Section 36-A (1) is to be followed notwithstanding anything contained in Section 2 (d) of the Cr.P.C. It has also been held that Section 36-A(1)(d) is inconsistent with Section 2-D and Section 190 of the Cr.P.C. and, therefore, any complaint that has to be made can only be made under Section 36-A(1)(d) to a special court, and not to a Magistrate under Section 190 of the Cr.P.C. The argument that the procedure under Section 190 of the Cr.P.C. has not been replaced by Section 36-A(1)(d) and was replaced only in-part, was held to be unacceptable. It has been held that Section 36-A(1)(d) specifies a scheme which is completely

²⁵ 1990 2 SCC 409



different from that contained in the Cr.P.C. Whereas, under Sec

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190 of the Cr.P.C., it is the Magistrate, who takes cognizance of an offence, however, under Section 36-A(1)(d) it is only a special court that takes cognizance of an offence under the NDPS ACT. In paragraph No.140.2 the Hon'ble Supreme Court unequivocally held that the "complaint" referred to in Section 36-A(1)(d) is not a private complaint that is referred to in Section 190 (1) (a) of the Cr.P.C. but can only be by an authorized officer. It is, thus, seen that in view of Section 36-A(1)(d), nothing contained in Section 190 of the Cr.P.C. can be said to apply to a special court taking cognizance of an offence under the NDPS Act. As a natural corollary, the trial of offences under the NDPS Act is to be conducted in accordance with chapter XVIII of the Cr.P.C. Sections (225 & 226) and not in accordance with chapter XIX of the Cr.P.C. Sections (244 to 247). Paragraph No.140 of the decision of **Toofan Singh(Supra)** is reproduced as under:

140.What is clear, therefore, is that the designated officer under section 53, invested with the powers of an officer in charge of a police station, is to forward a police report stating the particulars that are mentioned in section 173(2) CrPC. Because of the special provision contained in section 36A(1) of the NDPS Act, this police report is not forwarded to a Magistrate, but only to a Special Court under section 36A(1)(d). Raj Kumar Karwal (supra), when it states that the designated officer cannot submit a police report under section 36A(1)(d), but would have to submit a "complaint" under section 190 of the CrPC misses the importance of the non obstante clause contained in section 36A(1), which makes it clear that the drill of section 36A is to be followed notwithstanding anything contained in section 2(d) of the CrPC.



140.1. It is obvious that section 36A(1)(d) is inconsistent with section 2(d) and section 190 of the CrPC and therefore, any complaint that has to be made can only be made under section 36A(1)(d) to a Special Court, and not to a Magistrate under section 190. Shri Lekhi's argument, that the procedure under section 190 has been replaced only in part, the police report and complaint procedure under section 190 not being displaced by section 36A(1)(d), cannot be accepted. Section 36A(1)(d) specifies a scheme which is completely different from that contained in the CrPC. Whereas under section 190 of the CrPC it is the Magistrate who takes cognizance of an offence, under section 36A(1)(d) it is only a Special Court that takes cognizance of an offence under the NDPS Act.

140.2. Secondly, the "complaint" referred to in section 36A(1)(d) is not a private complaint that is referred to in section 190(1)(a) of the CrPC, but can only be by an authorised officer.

140.3. Thirdly, section 190(1)(c) of the CrPC is conspicuous by its absence in section 36A(1)(d) of the NDPS Act – the Special Court cannot, upon information received from any person other than a police officer, or upon its own knowledge, take cognizance of an offence under the NDPS Act.

140.4. Further, a Special Court under section 36A is deemed to be a Court of Session, for the applicability of the CrPC, under section 36C of the NDPS Act. A Court of Session under section 193 of the CrPC cannot take cognizance as a Court of original jurisdiction unless the case has been committed to it by a Magistrate. However, under section 36A(1)(d) of the NDPS Act, a Special Court may take cognizance of an offence under the NDPS Act without the accused being committed to it for trial.



140.5. It is obvious, therefore, that in view of section 36A(1)(d), nothing contained in section 190 of the CrPC can be said to apply to a Special Court taking cognizance of an offence under the NDPS Act.

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27. It is, thus, seen that there is no substance in the argument made by the learned counsel appearing on behalf of the petitioners so far as the same relates to not following the procedure contemplated under Chapter XIX of the Cr.P.C.

28. So far as the decision relied upon by the petitioner in the case of ***Sunil Mehta (supra)*** is concerned, the same is distinguishable on facts. The decision of ***Sunil Mehta (supra)*** relates to a question as to whether depositions of the complainant and his witnesses recorded under Chapter XV of the Cr.P.C., before cognizance is taken by the Magistrate, would constitute evidence for the Magistrate to frame charge against the accused under part B of Chapter XIX of the said Code. The case was with respect to the commission of an offence punishable under Sections 406, 420 and 114 read with Section 34 of the IPC. It is, thus, seen that the interpretation of a special enactment was not the subject matter of the case in the matter of ***Sunil Mehta (supra)***. There is no quarrel with respect to the proposition of law laid down therein so far as the same relates to the cases instituted otherwise than on a police report and which are to be governed by the chapter XIX of the Cr.P.C. However, in the instant case, Chapter XIX itself would not have any application as has been held in preceding paragraphs.

29. The other decision in the case of ***Harinarayan G, Bajaj (supra)*** relied upon by the petitioners also relates to the provisions of the Indian Penal Code. In none of the decisions relied upon by the



petitioners, the courts had an occasion to consider the provisions

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special statute and non-applicability of the provisions of the Cr.P.C. to the extent specifically excluded therein. In the case in hand, it has already been noted that so far as the trial under the NDPS Act is concerned, the mandate under the NDPS Act is unequivocally clear that the same has to be conducted by the court of Sessions/special judge and it is, therefore, seen that the applicability of Chapter XIX has been specifically excluded by mandate of law.

30. This brings this court to the argument of the learned counsel recorded in Para 5(iv) of the judgment. Learned counsel appearing on behalf of the petitioners submitted that there is no material available against them except a statement under Section 67 of the NDPS Act, which was already retracted by them at the earliest opportunity. While placing reliance on a decision of the Hon'ble Supreme Court in the case of **Toofan Singh (supra)**, it is submitted that in absence of any material against the petitioners, the charges in question ought not to have been framed. Specific submissions are made with respect to petitioner No.4/Diwarkar Gupta that the allegations against him are that he was a partner with petitioner No.3/Amit Kohli and Ashish Kumar. It is alleged against him that he was running a business in the name and Style of E-Dedications (Pvt.) Ltd., having an office at Masjid Moth, South-Extension II, New Delhi. According to him, the website www.onlinesolution4u.com is not a registered domain of Diwakar Gupta but one of Mr.Ravi Jain's, resident of Ludhiana. Another website www.palceurorders.com is registered in the name of one Mr. Pankaj residing at Malviya Nagar, New Delhi. It is submitted that no recovery of drug/any psychotropic substance has been effected from Diwakar Gupta. It is also submitted that no evidence has been produced against him so as to prove his complicity in the case. It is,



therefore, submitted that there is nothing to connect petitioner 1 with the alleged offence. As nothing incriminating has been recovered, no adverse CFSL report has been produced in respect of the laptop and hard disk seized from the office of E-destination Pvt. Ltd., hence, in the absence of any evidence *qua* him, the order of framing of charge against Diwakar Gupta deserves to be set aside. Reliance is further placed on a decision of the Hon'ble Supreme Court in the case of *Natwarlal Shankarlal Mody v. State of Bombay*²⁶ and *LK Adwani v. CBI*²⁷.

31. Learned counsel appearing on behalf of the respondent, however, submits that specific allegations have been made against the petitioners and contemporaneous record has been produced in the form of evidence. It is submitted that petitioner No.1 was a postal agent who used to obtain a parcel of psychotropic substance drugs at the post office sent by petitioner No.3, through petitioner No.2. It is a specific case of the respondent that petitioner No.1 was caught while taking a bag from petitioner No.2 at the main gate of Indraprastha Post Office. Petitioner No.2 is an employee of petitioner No.3 and, therefore, the seizure memo of intercepting petitioner No.1 and petitioner No.2 clearly establishes the role of these two petitioners. It is also submitted that during a search of the ground floor of petitioner No.2 *i.e.*, MB-85, Shakarpur, a huge quantity of psychotropic substances including rubber stamps and documents were recovered. The said premises were let out by petitioner No.2 to petitioner No.3 and in turn, petitioner No.3 allowed petitioner No.2 to use the said premises for the purposes of packaging the contraband articles. It is, thus, stated that the role of petitioner No.3 is also established. On the basis of the information, search authorization team reached near Leela

²⁶ 1961 SCC OnLine SC 1

²⁷ 1997 (41) DRJ 274

Ram Market, Masjid Moth, South-Extension, Part II and entered

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office on the first floor of Leela Ram Market Masjid Moth at 4:30 pm where two persons were sitting on the computer and two more persons were sitting in the separate closed office. On inquiry, the names of the two persons who were sitting in the closed office, came to be known as Amit Kohli/Petitioner No.3 and Diwakar Gupta/Petitioner No.4. Thereafter, the search of the office of E-Dedications (Pvt.) Ltd. was conducted and during the search, three laptops, one CPU and a document related to the inquiry were seized. It is alleged in the complaint that Diwakar Gupta, Amit Kohli and Mr.Ashish Kumar (absconded accused) are the main conspirators, who designed the entire conspiracy. It is, therefore, submitted that there is sufficient material against each of the accused persons.

32. In the instant case, the original record of the court below has been called for. This court has perused the record and perusal thereof shows that the seizure memo dated 05.05.2008 drawn at the outside gate of IPPO, ITO, New Delhi, is on record. Petitioners No.1 and 2 have signed the said seizure memo. Another seizure of the same date drawn at MB-85 Master Block, Shakarpur, New Delhi with annexures is also on record on page Nos. 21 to 29. The same also contained the signatures of petitioner No.1 and petitioner No.2. Another search/seizure memo dated 05.05.2008 drawn at 209/31, Leela Ram Market Masjid Moth, South Extension-2 with annexure is also available on page Nos.30 to 33. In the said seizure memo, the signatures of Amit Kohli, and Diwakar Gupta are available. Various seizures were made from the premises. As per annexure A of the seizure memo, three laptops marked as 1, 2 and 3, CPU assembled block marked 4 and 26 files containing documents pertaining to properties of Amit Kohli and Diwakar Gupta and their family

members and also the bank accounts related to documents of the
persons were seized. Various documents have been filed, as per the
list of documents along with the complaint including copies of orders
which were being placed to Amit Kohli and Diwakar Gupta, pursuant,
to which supplies were being made.



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33. It is, thus, seen that it is not only the statement under Section 67 of the NDPS Act against the petitioners but there is other material also available against them. Whether the material is sufficient to convict them or not, would be the subject matter of trial but at the stage of framing of charge, the court is required to see whether *prima facie* there is any material to indicate the complicity of the accused persons to put to trial. The learned court below after considering the material available against the accused persons has proceeded to frame the charge and this court does not find any substance to take a different view than the view which had already been taken by the special judge.

34. In view of the aforesaid findings, this court is of the view that the instant petition does not have any substance; therefore, the same is dismissed. However, nothing expressed in this order should be construed to be an expression on the merits of the allegations against the accused persons.

35. Taking into consideration the fact that the date of seizure of the controverting articles is 05.05.2008 and as of now around 14 years have passed but the trial has not yet commenced; and the matter remained pending at different stages on account of various reasons, as can be seen from the narration of facts, therefore, this court finds it appropriate to direct the Special Judge to conclude the entire trial as expeditiously as possible and preferably within a period of eight months from the date of receipt of the copy of this order. The

petitioners are directed to cooperate with the progress of the trial

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in case of any non-cooperation, the respondent would be free to take appropriate steps, in accordance with law.

36. Accordingly, the petition stands disposed of. Let the record of the trial court be sent back to the same court immediately.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 10, 2022

Priya

