

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CrLA(AD) No. 34/2022

Reserved on: 13.11.2024.

Pronounced on: 13.12.2024.

UT of Jammu and Kashmir through Police
Station Rajouri.

...Appellant

Through: Mr. P. D. Singh, Ld Dy.AG.

Vs.

1. Irfan Qayoom
S/o Abdul Qayoom
R/o Ward No. 7 Rajouri.

...Respondent(s)

2. Farooq Ahmad
S/o Abdul Rashid
R/o Ward No. 8 Rajouri.

Through: Mr. Nahiem Sheikh, Advocate, for R-1

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGEMENT

Mohd. Yousuf Wani-J

1. Delay has been condoned and leave to appeal granted already vide order dated 30th of August 2022.
2. Impugned in the instant appeal is the judgment dated 9th of December 2017, passed by the Court of learned Principal Sessions Judge Rajouri, (hereinafter referred to as the 'trial court' for short), while culminating the trial on Police Report/Challan that was filed by the Police Station Rajouri in case of FIR No. 63/2015 under Sections 8/21/22 of Narcotic Drugs and Psychotropic Substances Act, 1985(hereinafter referred to as

‘the Act’ for short) whereby the learned trial court acquitted the respondents/accused of their charges on account of the failure of the prosecution to prove their guilt beyond any shadow of doubt.

3. The impugned judgment has been assailed by the U.T. of J&K through the medium of the instant appeal, on the grounds *inter-alia* that same is against the law and the facts of the case, as the learned trial court has not appreciated in the correct perspective, the evidence adduced at the trial of the case by the prosecution. That the prosecution at the trial led sufficient direct and circumstantial evidence establishing the guilt of the respondents, but the learned trial court taking a hyper-technical view and giving overwhelming weightage to some minor contradictions, proceeded to pass the impugned judgment of acquittal which suffers from illegality and perversity. That the respondents willfully and intentionally committed the crime for which they were put to trial but the learned trial court did not appreciate the evidence of the prosecution. That the respondents on 5th of February 2015 at 2130 hours were spotted by a patrolling party of Police Post, City Rajouri while carrying polythene bags under suspicious circumstances at Chattigali Rajouri who were tactfully nabbed and questioned by the said police party but out of them the respondent no.2 Farooq Ahmed while taking advantage of the darkness, threw away his bag and succeeded in fleeing from the spot. That upon searching the bags, 25 bottles of Corex, (each bottle of 100ml) were found in each of the polythene bag whereupon the In-charge of the patrolling party dispatched a docket regarding the incident which led to the registration of the case FIR No.63/2015 under Sections 8, 21, 22 of the Act in the Police Station

Rajouri. That SI Mohd Rafiq was entrusted the investigation of the case, who reached on spot, made the seizure and recorded the statements of the witnesses. That the seizure and sampling of the recovered Psychotropic substance, i.e., Corex bottles, was done as per the procedure which fact was testified by the witnesses at the trial, but the learned trial court did not appreciate the same, which renders the impugned judgment illegal and perverse. That the investigation in the case finally led to the filing of final report in terms of the provisions of Section 173 of the J&K Code of Criminal Procedure SVT 1989, (already repealed but applicable in the case and (hereafter referred to as 'the Code' for short) as sufficient evidence was collected during the investigation which established the guilt of the respondents/accused.

4. It is apt to give a brief resume of the facts of the appellants case, which was before the learned trial court as being relevant for disposal of the instant appeal. Accordingly, case of the prosecution is that, on 5th of February 2015, at 2130 hours, patrolling party of police post City Rajouri, headed by PW-1 Ghulam Murtaza, upon reaching at Chattigali, spotted the respondents/accused carrying polythene bags, who upon seeing the police party tried to hide themselves under suspicious circumstances, whereupon they came to be nabbed and questioned. That although they disclosed their identity, yet the respondent No. 2, Farooq Ahmed, taking advantage of darkness, succeeded in fleeing from the spot after throwing away his bag. That on search of the bags, 25 bottles of Corex were found in each of the bags. A docket containing the information in respect of the incident was sent by the PW-1 through constable Mohd Aslam to In-charge Police Post City Rajouri, for

registration of the FIR and deputation of Investigating Officer on spot. That investigation in the case was entrusted to PW-8 SI Mohd Rafiq who reached on the spot immediately, prepared site plan, seizure memos, packed and sealed the recovered Corex, bottles. That subsequently, the Investigating Officer approached the Magistrate for sampling and re-sealing purposes who also recorded the statements of the witnesses. That during investigation it was found that the respondents/accused were indulging in the sale of the seized Psychotropic substance i.e. Corex to youth at exorbitant rates. That upon establishment of the commission of the offences, punishable under Sections 8, 21, 22 of the Act, the final report/challan was presented before the competent court.

5. During the trial of the case, proceedings in terms of the provisions of Section 512 of the Code came to be initiated against the respondent No. 2 with the issuance of general warrant of arrest against him vide order dated 4th of April, 2015. The learned trial court framed the formal charge against the respondent No. 1 on the same date i.e. 4th of April, 2015, who pleaded not guilty pursuant to which the learned trial court directed the prosecution to adduce evidence. The prosecution evidence as against the respondent No. 1 came to be closed by the learned trial court vide order dated 21st of September, 2015 and the statement under Section 342 of the Code, of the said respondent No. 1 came to be recorded on 17th of November, 2015. Before the learned trial court could hear the arguments on both sides in terms of the provisions of Section 273 of the Code for considering as to whether a case of '**Evidence**' or of '**No Evidence**' appears to be made out, the respondent

No. 2 came to be arrested in execution of the general warrant of arrest and brought at the trial of the case. The said respondent no. 2 was also formally charged of the offences punishable under Sections 8/21/22 of the Act vide Order dated 3rd December, 2015, who also pleaded not guilty to the charge framed against him. The respondent No. 2, duly represented by his advocate, submitted before the learned trial court that he admits the evidence already produced by the prosecution, as against the respondent No. 1, whereupon his statement under Section 342 of the Code came to be recorded on 17th of March 2016. The learned trial court vide its order dated 11th of April 2016, opined that a case of “**No Evidence**” is not made out in the circumstances of the case, especially having regard to the evidence adduced at the trial by the prosecution and accordingly directed the respondents to adduce their evidence in defence if they so choose. The respondents did not opt to lead any evidence in their defence as is apparent from the order dated 26th of April 2016 of the learned trial court. The learned trial court, after hearing the arguments on both the sides, returned the impugned judgment of acquittal.

6. We have heard the learned counsel for both the parties and considered their rival arguments.
7. In the light of the perusal of the record of the instant appeal, the scanned copy of the trial court record, and the consideration of the rival arguments advanced on both sides, we are of the view that the learned trial court has rightly appreciated the evidence adduced by the prosecution at the trial and while doing so, has justly opined that the prosecution has failed at the trial to bring home the guilt of the

respondents beyond any shadow of doubt. There appears to be no illegality or perversity with the impugned judgment.

8. It is an accepted principle of Criminal Jurisprudence that an accused person is presumed to be innocent till he is proved guilty and the burden of proving everything essential to establish of his/her guilt lies on the prosecution/State. There must be a clear and unequivocal proof of, *corpus delicti*'. The prosecution should stand or fall on its own legs and it cannot derive any benefit from the weaknesses of the defense. Suspicion however, strong cannot take the place of legal proof. There lies a long mental distance between "may be true" and "must be true". The vital distinction between conjectures and sure conclusions needs to be maintained in criminal trials.
9. The prosecution examined Nine witnesses, i.e. PWs'1 - 9, at the trial, and PW-10 has not been examined, who, as the then Station House Officer concerned is alleged to have expressed his satisfaction regarding the investigation process. There appear fatal discrepancies and contradictions in the statements of the prosecution witnesses examined at the trial in respect of the material particulars of the case, especially with regard to time of occurrence, seizure of contraband substance, resealing, sampling, and recording the statements of the witnesses during the investigation. The investigation in the case appears to have been conducted in a casual and cavalier manner while observing the mandatory provisions of the Act in breach.
10. PW-1 S.I Ghulam Murtaza, examined at the trial on 25th of April 2015, happens to be the complainant in the case. He was In-charge of the patrolling party. It is he who sent docket/report from the spot of

occurrence to the Police Post City Rajouri for registration of the case FIR through SgC TMohd. Aslam. The said SgCT MohdAslam, No.1036/R, was a very important witness from the prosecution point of view, who has neither been listed nor examined as a witness at the trial. His examination was necessary for unfolding the prosecution version of the case. His non-examination at the trial justifies an adverse inference. PW-1 in his statement at the trial *inter-alia*, deposed that the Investigating Officer did not associate any civilian with the occurrence, despite the fact that there were many civilian houses nearby.

11. PW-2 SGCT Mohd Rafiq No. 740/R, in his statement at the trial *inter-alia*, deposed that the Investigating Officer did not associate any civilian with the occurrence, despite the fact that there were many civilian houses nearby. That 25 bottles of Corex were recovered from the polythene bag of respondent/accused no. 2, Farooq Ahmad and as per the Police party, same quantity of the Corex bottles was also recovered from the polythene bag of respondent no. 1, Irfan Qayoom. The said witness by deposing at the trial that as per the saying of the Police party, similar quantity of Corex bottles as was recovered from the bag of R2 was also recovered from the bag of R1, renders the seizure memo EXTP 1/1as doubtful. The said witness to the seizure also stated in his cross examination that he did not see bag in the hands of R1 Irfan Qayoom, but police party told him that he was carrying the bag.
12. PW-3 Constable Mohammad Farooq 759/R, who is also listed as a witness to the occurrence and seizure, has introduced a new contradictory story at the trial by saying that when he, PW-8

Mohammad Rafiq and Mohammad Aslam approached Chattigali Rajouri at 9.30 pm, they witnessed respondent No. 1 Irfan Qayoom, who was standing there when in the meanwhile, respondent No. 2 Farooq Ahmad came and handed over one bag to the former, and then both started walking in their direction, who were thereafter stopped by them. That Respondent No. 2, Farooq Ahmed, was allowed to go and Respondent No. 1, Irfan Qayoom, was stopped and bag was taken from his custody. He deposed in his examination that 60 bottles of Corex were recovered and thereafter the accused was taken to the Police Post. The said witness also deposed that packet was sealed in the Police Station. That site plan was prepared by the Investigating Officer in the next morning. That seizure memo was also prepared next morning at the place of occurrence. The said witness, who has been also associated with the seizure memo, thus, questions the genuineness of the seizure memo EXTP 1/1.

13. PW-4SgCTMohd Sharif No. 980/R, deposed in his examination at the trial that two bottles were separately packed for chemical analysis. The said witness also deposed that when the Investigating Officer reached on the spot and prepared the seizure memo, the FIR had not been registered at that time. The said witness also deposed that his statement was recorded on 13th of February 2015 i.e. on 8th day of the occurrence.
14. PW-7 Pawan Kumar, who has been listed as a witness to the chemical analysis report, deposed in his examination that on 20th of February 2015, he received two sealed packets forwarded by DySP Rajouri vide his letter No. RDR/Hq/Circular/2015/1280/81/DPO dated 16th of February 2015 through ASI Paramjeet Singh of Police Station Rajouri.

Thus, it is clear that the sample was sent for chemical analysis after 15 days of the alleged occurrence. It is a settled legal position that undue and unreasonable delay in sending the sample for chemical analysis doubts the prosecution version of the case.

15. PW-8 Mohd Rafiq, examined on 21st of September 2015, deposed that sealed packet was got re-sealed from the Tehsildar and sample was sent to FSL through covering letter number 165/WBN. The said witness also deposed that he left the Police post in the evening at 8.15pm when PW 2 Mohammad Rafiq deposed that Police party reached the spot at 9pm. The said witness also deposed that one bottle from each bag was taken for FSL examination.

16. PW-ASI Riaz-ul-Haq Mirza, examined on 21st of September 2015, who has also investigated the case, *inter-alia* deposed that seized packets were got re-sealed from the Naib Tehsildar on 6th of February 2015 and sample was forwarded to FSL on 7th of February 2015. He also deposed that said Naib Tehsildar was not cited as a witness.

17. In the light of the evidence recorded at the trial, the following fatal discrepancies, contradictions and flaws emerge which lend support to the opinion of the learned trial court to the effect that the prosecution miserably failed at the trial to establish the guilt of the respondents beyond any shadow of doubt.

(i) The investigation in the case appears to have been started by the PW-8 before the registration of the case FIR. The docket EXTP1/2, which came to be sent by PW-SI Ghulam Murtaza, In-charge of the patrolling party to the In-charge Police Post, City Rajouri is in essence the first

information report. The perusal of Xerox copy of the Challan/Final Report reveals that the In-charge Police Post, City Rajouri, upon receipt of the docket from the PW-1 forwarded the same to the Police Station Rajouri for registration of the FIR with his necessary endorsement. The said In-charge Police Post, in his endorsement on the docket for registration of the case FIR in the Police Station Rajouri, also writes that he has, in the meantime, entrusted the investigation of the case to SI Mohammad Rafiq, EXJ 786011, who has proceeded on the spot. **So, it is clear that the investigation of the case was started before the registration of the FIR.**

The said fact was also testified by PW-4 Mohd Sharif at the trial.

- (ii) The seizure memo EXTP 1/1 has not been proved at the trial, as PW-2 Mohd Rafiq, as a witness to the seizure, deposed at the trial that he heard from the Police party that a similar quantity of the Corex bottles was recovered from the respondent. No.1 Irfan Qayoom as was recovered from the bag of respondent 2 Farooq Ahmad.
- (iii) Constable Mohd Aslam No.1036/R, who is alleged to have taken the docket from the spot to the Police post, has not been listed or examined as a witness. The said person was an important witness in the case for unfolding the prosecution version.

- (iv) It has come in the evidence that two bottles, one from each bag, were separately packed as sample for chemical analysis. It was not of the job of the Investigating Officer to separately pack any bottle for sampling purposes.
- (v) Some witnesses have deposed at the trial that the Investigating Officer came on the spot on the next morning and prepared the site plan and seizure memo. This doubts the genuineness of the whole investigation proceeding.
- (vi) The sampling is alleged to have been done before the executive Magistrate/Naib Tehsildar, who has not been either listed or examined as a witness. This doubts the sampling process.
- (vii) The samples, which otherwise were not reliable, came to be received at the FSL after 15 days from the date of the incident.
- (viii) It is astonishing that EXTP 1/3, which is a document purported to have been prepared by the Investigating Officer on 5th of February 2015, reveals that sample was taken by him and marked as Pack (C) and (D) and sent for chemical analysis. The said document reveals that IO sealed two bottles one from each bag separately in two plandas Mark “C” and “D” and the remaining 23/23 bottled were sealed separately in two plandas “E” and “F”. He has thereby given the account of only 48 bottles against 50 bottles. This destroys the whole investigation

process and proves the lie that the sample was taken before the Executive Magistrate/Naib Tehsildar. Had the sampling been done before the Executive Magistrate as alleged, the FSL would have received any communication from the said Magistrate, which fact was also testified by the PW Pawan Kumar (FSL expert).

- (ix) The Investigating Officer in the case has also observed the provisions of Sections 52 and 57 of the Act in breach. As per the mandatory provisions of Section 52 (1) read with Section 43 of the Act, the respondents/accused were needed to be informed of the grounds of their arrest which has not been done. The report regarding the arrest of the respondents and the seizure of the alleged psychotropic substance from them which was needed to be sent to the immediate superior officer by the SHO, Rajouri within 48 hours as per the Section 57 of the Act, has not been so sent in the case. The non-compliance of the mandatory requirements as per the provisions of Sections 52 and 57 of the Act, in the facts and circumstances of the case doubts the genuineness of the prosecution version of the case. The provisions which stand incorporated under sections 52 (1) and 57 of the Act to be followed after search and arrest of the accused are mandatory in character. The reason is that the right to be informed about the grounds of arrest guaranteed by section 52 (1) and the requirement regarding making of

full report regarding arrest and seizure to the immediate superior officer within 48 hours under section 57 of the Act confer a valuable right on the accused. When informed about the grounds of arrest at the earliest, the accused becomes aware at the very outset about the probable charge against him, so as to allow him to prepare his defense. Similarly the provisions requiring the person making arrest and seizure to make a full report to his immediate superior within 48 hours, brings into existence a document which can be used for the purpose of cross-examination in defense. The making of reports within 72 hours as per the provisions of section 42 (2) and within 48 hours as per section 57 respectively will also bring to an end the possibility of antedating or improving the prosecution case/version. The non-compliance of the mandatory provisions of Sections 52 and 57 of the Act would be an infirmity bound to reflect on the credibility of the prosecution.

- (x) No civilian witness has been associated with the alleged incident, despite the availability, which justifies an adverse inference.

18. In the light of the total failure of the prosecution to prove the seizure of the alleged manufactured drugs containing codeine- a psychotropic substance, as a constituent through cogent, uncontradictory, and trustworthy evidence, the presumptions under Sections 35 and 45 of the Act loose significance.

The presumption under Sections 35 and 54 of the Act is never absolute but rebuttable presumption. The initial burden is always on the prosecution to establish a *prima facie* case against the accused, only where after burden will shift to the accused.

Admittedly section 54 of the Act provides for a reversal burden of proof upon accused, contrary to normal rule of criminal jurisprudence for presumption of innocence unless proved guilty. This however, does not dispense with the requirement of the prosecution to establish a *prima facie* case in the backdrop of sufficient, cogent and clear evidence with observance of mandatory provisions under sections 42, 50, 52 and 57 of the Act, where after the accused has to be called to account for his possession. The provisions of sections 35 and 54 of the Act are in the form of an additional advantage to the prosecution and the factum of alleged possession does not *ipso facto* make the accused liable.

The Investigating agency can take the benefit of presumptions under sections 35 and 54 of the Act, for finalization of the investigation process, and even for purposes of bail, the prosecution can rely upon the said presumptive provisions. But for the purposes of the trial, the accused can be called to account for his alleged possession of the narcotic substance as being, “not conscious” only after the prosecution proves the foundational facts of its case beyond any doubt.

The extent of the applicability and the relevance of the presumptions under sections 35 and 54 of the Act came for consideration before the Hon’ble Supreme Court in “**Noor Aga vs. State of Punjab and anr (2008) 16 SCC 417**” decided on 9th July,

2008. It is appropriate to reproduce the relevant extracts from the judgment as under:-

“18.The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the Court to impose fine of more than maximum punishment of Rs.2,00,000/- as also the presumption of guilt emerging from possession of Narcotic Drugs and Psychotropic substances, the extent of burden to prove the foundational facts on the prosecution, i.e., ‘proof beyond all reasonable doubt’ would be more onerous.

Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is “beyond all reasonable doubt” but it is ‘preponderance of probability’ on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt...”

The law laid down in **Noor Aga case** (supra) was again followed by the Hon’ble Apex Court in “**Mohan Lal v. State of Rajasthan (2015) 6 Supreme Court Cases 222 and Bawindar Singh (Binda), appellant vs. Narcotics Control Bureau, respondent with Satnam Singh, appellant vs. Narcotics Control Bureau, 2023 SCC online SC 1213.**

Balwinder Singh (Binda) vs. Narcotics Control Bureau” cited (supra) was decided by a three judge bench of the Hon’ble Apex

Court. It is also felt appropriate to reproduce the relevant paras of the judgment for ready reference:

“30. We may first test on the anvil of certain law, the plea taken by learned counsel for the appellant-Satnam Singh that the prosecution has failed to establish a prima facie case against the accused and therefore, the burden of proving his innocence did not shift back to him. In the case of Noor Aga 38 (supra), a two-Judges Bench of this Court was required to decide several questions, including the constitutional validity of the NDPS Act and the standard and extent of burden of proof on the prosecution vis-à-vis the accused. After an extensive discussion, this Court upheld the constitutional validity of the provisions 10 of Sections 35 and 54 of the NDPS Act 43 , but went on to hold that since the provisions of the NDPS Act and the punishments prescribed therein are stringent, the extent of burden to prove the foundational facts cast on the prosecution, would have to be more onerous. The view taken was that courts would have to undertake a heightened scrutiny test and satisfy itself of “proof beyond all reasonable doubt”. Emphasis was laid on the well-settled principle of criminal jurisprudence that more serious the offence, the stricter would be the degree of proof and a higher degree of assurance would be necessary to convict an accused. [Also refer: State of Punjab v. Baldev Singh 44, Ritesh Chakarvarti v. State of M.P.45 and Bhola Singh39 (supra)].

31. Thus, it can be seen that the initial burden is cast on the prosecution to establish the essential factors on which its case is premised. After the prosecution discharges the said burden, the onus shifts to the accused to prove his innocence. However, the standard of proof required for the accused to prove his innocence, is not pegged as high as expected of the prosecution. In the words of Justice Sinha, who speaking for the Bench in Noor Aga38 (supra), had observed that:

58.....Whereas the standard of proof required proving the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.”

32. The essence of the discussion in the captioned case was that for attracting the provisions of Section 54 of the NDPS Act, it is essential for the prosecution to establish the element of possession of contraband by the accused for the burden to shift to the accused to prove his innocence. This aspect of possession of the contraband has to be proved by the prosecution beyond reasonable doubt.”

19. In the backdrop, we are of the considered view that learned trial court has rightly appreciated the law as also the evidence while passing the

impugned judgment. The opinion of the learned trial court to the effect that prosecution has failed at the trial to establish the guilt of the accused i.e., respondents beyond any shadow of doubt, does not call for any interference. There accordingly, does not appear to be any illegality with the impugned judgment. The instant appeal, as such, is **dismissed** as meritless.

20. Before parting, we with deep concern feel it inevitable to point out that “illicit traffic” in relation to Narcotic Drugs and Psychotropic Substances is on the alarming increase, which has led to drug addiction among a sizable section of the public, particularly the adolescents and students of both the sexes. The menace has assumed serious and alarming dimensions in the recent years. Drug addiction has been eating vitals of the society. Everyday we hear about the seizure of Narcotic Drugs and Psychotropic Substances especially from the youth. It is shocking that most factual and genuine cases in relation to offences under NDPS Act end in acquittals mainly on account of casual, cavalier, unfair, faulty and non-scientific investigations. The mandatory provisions under NDPS Act are being taken casual and observed in breach. Such non-observance of mandatory provisions prescribed under the Act No.61 of 1985, which provide for stringent bail provisions and punishments specifying mandatory minimum imprisonment and fine results in the failure of genuine cases at the trials. Casual, unfair and non-scientific investigations in NDPS cases is uncalled for. A larger Bench of the Hon’ble Apex Court in case **Hira Singh and Anr. Vs. Union of India and Anr., AIR 2020 SC 3255, decided on 12.04.2020** inter-alia observed:-

“ 8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the [Opium Act, 1857](#), [the Opium Act, 1875](#) and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of [NDPS Act](#). As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and [Psychotropic Substances Act, 1988](#) came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. The provisions of [NDPS Act](#) are required to be interpreted keeping in mind the object and purpose of [NDPS Act](#); impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted”.

21. All the concerned agencies viz Central Excise, Narcotics, Customs, Revenue Intelligence and Police are expected to rise to the occasion and investigate the Narcotic cases with utmost responsibility and fairness. The Investigating agencies need to reach to the root and to also identify the real culprits behind the crime by ascertaining the source of narcotic drugs. The menace of drug addiction is more dangerous than any pandemic and thus the drug paddlers and addicts need to be distanced from society, kept in jail quarantine and then reformed in drug de-addiction centers. It is quite shocking that medicines containing the Narcotic drugs and/or Psychotropic Substances as sole constituent-s or

in the mixture are being sold as Over-the-Counter drugs for petty gains being unmindful of the devastative effects and deadly impact of the same on the society as a whole. In **Union of India Vs. Ram Samujh and Ors., 1999 (9) SC 429**, it was *inter-alia* observed by the Hon'ble Apex Court:-

“it should be borne in mind that in a murder case, the accused commits murder of one or two persons while those persons who are dealing in Narcotic Drugs are instrumental in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are hazard to the society even if they are released, temporarily in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved”.

The manufacture, supply, transportation, sale and purchase of Narcotic Drugs and Psychotropic Substances being prescribed and used as medicines should be strictly accounted for, right from the manufacturer upto the purchaser. The Medical distributors, retailers, Pharmacists and all the Druggists shall as per the law, rules and the Regulations governing the field sell the drugs containing Narcotic and Psychotropic Substances, for medicinal use only on the prescriptions of the Doctors or registered Medical Practitioners. They shall keep the record of the sale of such Drugs in order to prevent any misuse or abuse of the same. The Drug Control Department, Narcotics Control Bureau, Police and other concerned agencies are expected to be vigilant in the matter.

It is equally surprising that investigations in NDPS cases are most often being entrusted to incompetent officers. AS per the provisions of the Section 175 of BNSS read with Section 53 of the NDPS Act, an officer In-charge of a Police Station can investigate the offences under the NDPS Act. So a case under the NDPS Act cannot be investigated by a police officer below the rank of a Sub Inspector. A Division Bench of this Court has already in PIL No. 05/2013 titled as *“Court on its Own Motion” Vs. State of J&K and Others* (Jammu Wing) passed a series of directions to ensure that, in NDPS cases, the investigation is conducted in a proper and professional manner by adhering to the mandatory provisions of the Act so as to minimize the acquittals in justified cases. The Central and State/UT Governments as such need to authorize the experienced and competent officers of Central Excise, Narcotics, Customs, Revenue Intelligence, Police etc to exercise powers under Sections 41, 42 and 43 etc of the NDPS Act. A casual approach of the Investigating agencies in the matter of the investigation in NDPS cases creates a sense of insecurity and undermine the faith of the common man in the administration of the criminal justice. Investigation of cases under NDPS be henceforth conducted by a specialized cell/team of officers specifically trained to deal with cases under the NDPS Act with an officer not below the rank of Sub-Inspector as its head under the close supervision of a gazetted officer who shall monitor the progress of investigation on day to day basis and issue written guidelines to the team.

22. A good number of the qualified and competent officers should be sent for refresher courses by Home Department to learn the Drug Law

Administration and enforcement including NDPS and PITNDPS Acts and Rules framed thereunder.

23. We, however, appreciate the efforts of the Government of Jammu and Kashmir Home Department, Civil Secretariat, Srinagar, in issuing the circular No. 02-Home of 2017 dated 25.09.2017 prescribing the Standard Operating Procedure(s) to be followed in NDPS cases and expect that same shall be pressed into service.
24. We shall be failing in our duty, by not directing that NDPS cases shall be tried under law, by the Special Courts under the Act and by other Sessions Court with utmost diligence as priority sector litigation.

(MOHD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR

13.12.2024

Ishaq

- i) Whether the judgment is speaking ? Yes
ii) Whether the judgment is reportable ? Yes