

UNION OF INDIA
v.
MOHANLAL & ANR.
(Criminal Appeal No. 652 of 2012)

JULY 3, 2012

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 - ss. 8/18(b) r/w s. 29 and 52A - Charge u/ss. 8/18(b) r/w s. 29 - Impugned order acquitting the accused on the ground that failure to produce the contraband before court, in absence of proof that the same was destroyed as per prevalent procedure, implies failure to prove its seizure - In appeal, brought to the notice of the Supreme Court that States not following the procedure prescribed for destruction of the seized contraband resulting in accumulation of the seized contrabands increasing chances of its pilferage and re-circulation - Held: Destruction of seized contraband is not only the statutory duty but a constitutional mandate - India being the signatory to United Nations Convention against Illicit Traffic and Narcotic Drugs and Psychotropic Substances, is required to reduce the vulnerability of the contrabands to substitution or theft during its storage - In view of SAARC Convention for Narcotic Drugs and Psychotropic Substances, 1990, authorities concerned required to take follow up action to eliminate drug abuse - Directions issued for collection of information, as regards Seizure, Storage, Disposal/Destruction and Judicial Supervision, from the police heads of each State through the Secretary concerned relating to the nature and extent of the problem and the available measures - Queries enumerated - Direction to Chief Secretaries of the States to serve a questionnaire on the above lines to the Director General of Police of the State for a report - Registrar General of the High Court in each State to be Nodal Officer and to ensure

- A *collections of the reports from the Chief Secretary of the State concerned and submit the report to the Supreme Court, containing a summary of the information - Answer to the queries specified under the head 'Judicial Supervision' to be collected by the Registrar Generals of the High Court*
- B *independently from the District and Sessions Judges concerned - Direction also to Chief of the agencies viz. Narcotics Control Bureau, Central Bureau of Narcotics, Directorate General of Revenue Intelligence and Commissionerates of Customs and Central Excise including*
- C *Indian Coast Guard, to issue similar questionnaire to the officers concerned and submit a report before Supreme Court - Standing Order No. 1/89 and Circular dated 22nd February, 2011 issued by Ministry of Finance, Department of Revenue, Government of India - Constitution of India, 1950 - Article 47*
- D *- Code of Criminal Procedure, 1973 - s. 451 - United Nations Convention Against Illicit Traffic and Narcotic Drugs and Psychotropic Substances - SAARC Convention for Narcotic Drugs and Psychotropic Substances, 1990.*

- E *Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283: 2002 (3) Suppl. SCR 39 - referred to.*

Case Law Reference:

2002 (3) Suppl. SCR 39 Referred to Para 5

- F **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 652 of 2012.**

From the Judgment & Order dated 05.01.2010 of the High Court of Madhya Pradesh bench at Indore in Criminal Appeal No. 193 of 2008.

- G **Ajit Kumar Sinha, R.P. Bhat, Sushma Manchanda, Shreekant N. Terdal for the Appellant.**

- H **Sunil Verma, Pradeep Kumar Kaushik, Sanjay Sharawat for the Respondents.**

The order of the Court was delivered by

A

T.S. THAKUR, J. 1. This appeal has been filed by the Union of India against the judgment and order of the High Court of Madhya Pradesh at Indore in Criminal Appeal No.193 of 2008 whereby the High Court has acquitted the respondents of the charges framed against them under Section 8/18(b) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, primarily for the reason that no evidence regarding the destruction of the 3.36 Kgs. of opium allegedly seized from the respondents had been provided by the prosecution. In the absence of any evidence to show that the seized contraband was destroyed as per the prevalent procedure, the contraband should have been, according to the High Court, produced before the Trial Court. The failure of the prosecution to do so, therefore, implies a failure to prove the seizure of the contraband from the possession of the respondents.

B

C

D

2. When this appeal came up for hearing before us on 11th April, 2012, Mr. Anoop G. Chaudhary, learned senior counsel, appearing for the appellant, argued that the High Court was in error in holding that the procedure prescribed for destruction of the contraband had not been followed and the destruction of the seized quantity had not been proved. In support of his submission he placed reliance upon Standing Order No.1/89 and Circular dated 22nd February, 2011 issued by the Ministry of Finance, Department of Revenue, Government of India, impressing upon the Chief Secretaries of the States and the Union Territories as also Heads of Police of the States to comply with the instructions and the procedure prescribed by the Standing Order. We had, upon consideration of the submission made by Mr. Choudhary, passed an order on 11th April, 2012 in which we said:

E

F

G

"We have been taken through the contents of the Standing Order also which prescribes the procedure for search, disposal and destruction of the seized contraband.

H

A We are not, however, very sure whether the said procedure
is being followed as it ought to be. The pilferage of the
contraband and its return to the market place for circulation
is, in our opinion, a major hazard against which the system
B must guard at all cost if necessary by making suitable
changes wherever the same are called for. Before any
exercise to that end is undertaken it is necessary to
examine whether the procedure is being followed in letter
and spirit. For that purpose in view we request Mr. Ajit
Kumar Sinha, learned senior counsel to assist this Court
C as Amicus Curiae and identify if possible, by reference to
the standing order and the available material, the weak
links in the chain of the procedure of search, disposal or
destruction of the narcotics and the remedial steps, if any,
needed to plug the holes. To that extent we are inclined to
D enlarge the scope of this appeal for we are of the view that
the hazardous nature of the substance seized in large
quantities all over the country must not be let loose on the
society because of human failure or failure of the system
that is purported to have been put in place."

E 3. Pursuant to the above we have heard Mr. Ajit Kumar
Sinha, learned senior counsel, who argued that the procedure
prescribed for destruction of the contraband seized in different
States has not been followed resulting in a very peculiar situation
arising on account of such failure and accumulation of the
F seized drugs and narcotics in large quantities thereby
increasing manifold the chances of pilferage for re-circulation
in the market from the stores where such drugs are kept. In
support of that submission Mr. Sinha placed reliance upon a
press report published in the timesofindia.indiatimes.com
G dated 12th July, 2011, under the heading "Bathinda's police
stores bursting at seams with seized narcotics". From a reading
of the said report it appears that the inventory of the drugs
seized by the police over the past many decades include drug
seized as far as back as in the early eighties. Large quantities
H of seized drugs are said to have lost their original colour and

texture, making even the task of preparing the inventories difficult. A

4. It was further stated that, not only traditional drugs like, opium, poppy husk, charas etc. but other drugs and modern narcotic substances are also awaiting disposal which includes 39 lakh sedatives and narcotic tablets, 1.10 lakh capsules, over 21,000 drug syrups and 1828 sedative injections apart from 8 kgs. of smack and 84 kgs. of ganja. B

5. The position is, according to Mr. Sinha, no better in some other States like Gujarat, Rajasthan and Bihar whose boundaries touch international borders. He submitted that in the absence of proper data from the concerned authorities it will not be possible to take stock of the magnitude of the problem no matter challenges posed by rampant drug abuse have attained formidable proportions affecting especially the youth and driving them towards crime and anti-social activities. Our attention was drawn by Mr. Sinha, to the judgment of this Court in *Sunderbhai Ambalal Desai v. State of Gujarat* (2002) 10 SCC 283 where this Court has emphasized the need for a proper and prompt exercise of the power to destroy the seized contrabands and recommended supervision by the registry of the High Court concerned to see that the rules in this regard are implemented properly. He also drew our attention to an order dated 3rd December, 2010 passed by the High Court of Judicature at Patna in which the High Court had recommended overhaul of the existing system so far as the procedure of seizure, sampling and sending of the seized articles to the FSL is concerned. The Court in that case noticed that 57% of the samples sent for testing were pending examination for four years causing delay in the trial of NDPS cases which was unfortunate to say the least. The Court also noticed steps to be taken in checking the despatch of reports from the FSL and recommended a revamp of the system. A similar order was passed by the Punjab and Haryana High Court in CWP No.1868 of 2011 where the High Court was informed by the C D E F G H

A State of Punjab and Haryana that incinerators for the destruction
 of such contrabands and drugs shall be provided by March
 2012.

6. Mr. Sinha supplemented his submissions by filing
 written submissions relying upon Article 47 of the Constitution
 of India and Section 52A of the NDPS Act, 1985 besides
 Section 451 of the Cr.P.C. to argue that destruction of seized
 narcotic drugs is not only a statutory duty but a constitutional
 mandate. He also relied upon United Nations Convention
 against Illicit Traffic and Narcotic Drugs and Psychotropic
 Substances and urged that India being a signatory to the
 Convention had no doubt promptly added Section 52A to the
 NDPS Act but much more was required to be done to reduce
 the vulnerability of such contrabands to substitution or theft while
 in storage in poorly secured and ramshackle storage facilities.
 Referring to SAARC Convention for Narcotic Drugs and
 Psychotropic Substances, 1990, it was urged by Mr. Sinha that
 while most of the countries were committed to elimination of
 drug abuse from their society, the ground reality is that there
 was no will to take follow up action by the concerned authorities.
 He, therefore, prayed for issue of appropriate directions to the
 States to furnish information relating to the nature and the extent
 of the problem faced by them so that this Court could, upon
 consideration of the matter, direct systemic changes having
 regard to the procedure followed and the experience of other
 countries in the world faced with similar problems.

7. We find considerable merit in the submissions made
 by Mr. Sinha. The problem is both wide-spread and formidable.
 There is hardly any State in the country today which is not
 affected by the production, transportation, marketing and abuse
 of drugs in large quantities. There is in that scenario no
 gainsaying that the complacency of the Government or the
 officers dealing with the problem and its magnitude is wholly
 misplaced. While fight against production, sale and
 transportation of the NDPS is an ongoing process, it is equally

important to ensure that the quantities that are seized by the police and other agencies do not go back in circulation on account of neglect or apathy on the part of those handling the process of seizure, storage and destruction of such contrabands. There cannot be anything worse than the society suffering on account of the greed or negligence of those who are entrusted with the duty of protecting it against the menace that is capable of eating into its vitals. Studies show that a large section of the youth are already victims of drug abuse and are suffering its pernicious effects. Immediate steps are, therefore, necessary to prevent the situation from going out of hand. We, therefore, consider it necessary to direct collection of the information from the police heads of each one of the States through the Chief Secretary concerned on the following aspects:

Seizure

1. What narcotic drugs and psychotropic substances (natural and synthetic) have been seized in the last 10 years and in what quantity? Provide year-wise and district-wise details of the seizure made by the relevant authority.

2. What are the steps, if any, taken by the seizing authorities to prevent damage, loss and pilferage of the narcotic drugs and psychotropic substances (natural and synthetic) during seizure/transit?

3. What are the circulars /notifications /directions / guidelines, if any, issued to competent officers to follow any specific procedure in regard to seizure of contrabands, their storage and destruction? Copies of the same be attached to the report.

Storage

1. Is there any specified/notified store for storage of the seized contraband in a State, if so, is the storage space available in each district or taluka?

A

B

C

D

E

F

G

H

- A 2. If a store/storage space is not available in each district or taluka, where is the contraband sent for storage purposes? Under what conditions is withdrawal of the contraband permissible and whether a Court order is obtained for such withdrawal?
- B 3. What are the steps taken at the time of storage to determine the nature and quantity of the substance being stored and what are the measures taken to prevent substitution and pilferage from the stores?
- C 4. Is there any check stock-register maintained at the site of storage and if so, by whom? Is there any periodical check of such register? If so, by whom? Is any record regarding such periodic inspection maintained and in what form?
- D 5. What is the condition of the storage facilities at present? Is there any shortage of space or any other infrastructure lacking? What steps have been taken or are being taken to remove the deficiencies, if any?
- E 6. Have any circulars/notifications/directions/guidelines been issued to competent officers for care and caution to be exercised during storage? If so, a copy of the same be produced.

Disposal/ Destruction

- F 1. What narcotic drugs and psychotropic substances (natural and synthetic) have been destroyed in the last 10 years and in what quantity? Provide year-wise and district-wise details of the destruction made by the relevant authority. If no destruction has taken place, the reason therefor.
- G 2. Who is authorised to apply for permission of the Court to destroy the seized contraband? Has there been any failure or dereliction in making such applications? Whether any person

H

having technical knowledge of narcotic drugs and psychotropic substances (natural and synthetic) is associated with the actual process of destruction of the contraband?

A

3. Was any action taken against the person who should have applied for permission to destroy the drugs or should have destroyed and did not do so?

B

4. What are the steps taken at the time of destruction to determine the nature and quantity of the substance being destroyed?

C

5. What are the steps taken by competent authorities to prevent damage, loss, pilferage and tampering/substitution of the narcotic drugs and psychotropic substances (natural and synthetic) during transit from point of storage to point of destruction?

D

6. Is there any specified facility for destruction of contraband in the State? If so, a list of such facilities along with location and details of maintenance, conditions and supervisory bodies be provided.

E

7. If a facility is not available, where is the contraband sent for destruction purposes? Under whose supervision and what is the entire procedure thereof?

8. Is any record, electronic or otherwise prepared at the site of destruction of the contraband and by whom? Is there any periodical check of such record? What are the ranks/designation of the supervising officers charged with keeping a check on the same?

F

Judicial Supervision

G

1. Is any inspection done by the District and Sessions Judge of the store where the seized drugs are kept? If drugs are lying in the store, has the Sessions Judge taken steps to have them destroyed?

H

- A 2. Is any report of the inspection conducted, submitted to the Administrative Judge of the High Court or the Registry of the High Court? If so, has any action on the subject being taken for timely inspection and destruction of the drugs?
- B 3. Are there any pending applications for destruction of drugs in the district concerned, if so, what is the reason for the delay in the disposal of such application?
4. What level officers including the judicial officers are associated with the process of destruction?
- C 5. At what stages are the magistrates/ judicial officers/ any other officer of the Court associated with seizure/storage/ destruction of drugs?
- D 6. Are there any rules framed by the Court regarding its supervisory role in enforcement of the NDPS Act as regards seizure/storage/destruction of drugs?
7. What is the average time for completion of trial of NDPS matters?
- E 8. The Chief Secretaries of the States shall ensure that a questionnaire on the above lines is served upon the Director General of Police of the State for a report and on receipt of the report forward the same to the Registrar General of the State High Court.
- F 9. The Registrar General of the High Court in each State shall be the Nodal Officer and shall ensure collection of the reports from the Chief Secretary of the State concerned, scrutinise the same, get clarifications and further information wherever necessary and submit the report to this Court containing a summary of the information so collected, as early as possible but not later than three months from the date of a copy of this order being received by him.
- G 10. The Registrar Generals shall independently secure
- H

from the concerned District and Sessions Judges, in their respective States, answer to the queries specified under the head "Judicial Supervision" within the same period. A

11. Chiefs of Central Government agencies viz. Narcotics Control Bureau, Central Bureau of Narcotics, Directorate General of Revenue Intelligence and Commissionerates of Customs & Central Excise including the Indian Coast Guard shall issue similar questionnaire to the concerned officers and submit a report detailing the information required in terms of this order within three months from today. B

12. Post the matter after the reports in terms of the above are received from all concerned. C

K.K.T.

Matter pending.