

**(2017) 05 AHC CK 0037**  
**In the Allahabad High Court**  
**Case No : 8391 of 2017**

DEV SHANKAR MISHRA AND OTHERS

APPELLANT

 $V_S$ 

UNION OF INDIA AND OTHERS

RESPONDENT

**Date of Decision : 05-05-2017**

### Acts Referred:

<a href=3998>Constitution of India</a>, <a href=3998-226>Article 226</a>, <a href=3998-226>Article 226</a>, <a href=3998-226>Article 226</a>, <a href=3998-226>Article 226</a>, <a href=3998-226>Article 226</a> - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs

<a href=2358>Narcotic Drugs and Psychotropic Substances Act, 1985</a>, <a href=2358-19>Section 19</a>, <a href=2358-19>Section 19</a>, <a href=2358-19>Section 19</a>, <a href=2358-19>Section 19</a>, <a href=2358-15>Section 15</a>, <a href=2358-15>Section 15</a>, <a href=2358-15>Section 15</a>, <a href=2358-15>Section 15</a>, <a href=2358-8>Section 8</a>, <a href=2358-8>Section 8</a>, <a href=2358-8>Section 8</a>, <a href=2358-8>Section 8</a>, <a href=2358-18>Section 18</a>, <a href=2358-18>Section 18</a>, <a href=2358-18>Section 18</a>, <a href=2358-18>Section 18</a>, <a href=2358-68F>Section 68F(2)</a>, <a href=2358-68F>Section 68F(2)</a>, <a href=2358-68F>Section 68F(2)</a>, <a href=2358-68F>Section 68F(2)</a>, <a href=2358-68F>Section 68F</a>, <a href=2358-68F>Section 68F</a>, <a href=2358-68F>Section 68F</a>, <a href=2358-68F>Section 68F</a>, <a href=2358-68I>Section 68I(3)</a>, <a href=2358-68I>Section 68I(3)</a>, <a href=2358-68I>Section 68I(3)</a>, <a href=2358-68I>Section 68I(3)</a>, <a href=2358-68O>Section 68O</a>, <a href=2358-68O>Section 68O</a>, <a href=2358-68O>Section 68O</a>, <a href=2358-68O>Section 68O</a>, <a href=2358-68E>Section 68E</a>, <a href=2358-68E>Section 68E</a>, <a href=2358-68E>Section 68E</a>, <a href=2358-68E>Section 68E</a>, <a href=2358-68F>Section 68F(1)</a>, <a href=2358-68F>Section 68F(1)</a>, <a href=2358-68F>Section 68F(1)</a>, <a href=2358-68F>Section 68F(1)</a>, <a href=2358-68I>Section 68I</a>, <a href=2358-68I>Section 68I</a>, <a href=2358-68I>Section 68I</a>, <a href=2358-68I>Section 68I</a>, <a href=2358-68I>Section 68I(1)</a>, <a href=2358-68I>Section 68I(1)</a>, <a href=2358-68I>Section 68I(1)</a>, <a href=2358-68I>Section 68I(1)</a>, <a href=2358-68I>Section 68I(1)</a>

[2358-68E](#)>Section 68E(1)</a>, <a href="#">2358-68E>Section 68E(1)</a>, <a href="#">2358-68E>Section 68E(1)</a>, <a href="#">2358-68E>Section 68E(1)</a>, <a href="#">2358-68E>Section 68E(1)</a>, <a href="#">2358-68H>Section 68H(1)</a>, <a href="#">2358-68H>Section 68H(1)</a>, <a href="#">2358-68H>Section 68H(1)</a>, <a href="#">2358-68H>Section 68H(1)</a>, <a href="#">2358-68H>Section 68H(1)</a>, <a href="#">2358-68L>Section 68L</a>, <a href="#">2358-68L>Section 68L</a>, <a href="#">2358-68L>Section 68L</a>, <a href="#">2358-68L>Section 68L</a>, <a href="#">2358-68U>Section 68U</a>, <a href="#">2358-68U>Section 68U</a>, <a href="#">2358-68U>Section 68U</a>, <a href="#">2358-68U>Section 68U</a>, <a href="#">2358-68U>Section 68U</a>, <a href="#">2358-68Z>Section 68Z</a>, <a href="#">2358-68Z>Section 68Z</a>, <a href="#">2358-68Z>Section 68Z</a>, <a href="#">2358-68Z>Section 68Z</a>, <a href="#">2358-68Z>Section 68Z</a>, <a href="#">2358-68A>Section 68A(2)(cc)</a>, <a href="#">2358-68A>Section 68A(2)(cc)</a>, <a href="#">2358-68A>Section 68A(2)(cc)</a>, <a href="#">2358-68A>Section 68A(2)(A)</a>, <a href="#">2358-68A>Section 68A(2)(A)</a>, <a href="#">2358-68A>Section 68A(2)(A)</a>, <a href="#">2358-68A>Section 68A(2)(c)</a>, <a href="#">2358-68A>Section 68A(2)(c)</a>, <a href="#">2358-68K>Section 68K(I)</a> - Punishment for embezzlement of opium by cultivator - Punishment for embezzlement of opium by cultivator - Punishment for embezzlement of opium by cultivator - Punishment for embezzlement of opium by cultivator - Punishment for embezzlement of opium by cultivator - Punishment for contravention in relation to poppy straw - Punishment for contravention in relation to poppy straw - Punishment for contravention in relation to poppy straw - Punishment for contravention in relation to poppy straw - Punishment for contravention in relation to poppy straw - Prohibition of certain operations - Prohibition of certain operations - Prohibition of certain operations - Prohibition of certain operations - Punishment for contravention in relation to opium poppy and opium - Punishment for contravention in relation to opium poppy and opium - Punishment for contravention in relation to opium poppy and opium - Punishment for contravention in relation to opium poppy and opium - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Appeals - Appeals - Appeals - Appeals - Appeals - Identifying illegally acquired property - Identifying illegally acquired property - Identifying illegally acquired property - Identifying illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Seizure or freezing of illegally acquired property - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Forfeiture of property in certain cases - Identifying illegally acquired property - Identifying illegally acquired property - Identifying illegally acquired property - Notice of forfeiture of property - Notice of forfeiture of property - Notice of forfeiture of property - Procedure in relation to certain trust properties - Procedure in relation to certain trust properties - Procedure in relation to certain trust properties - Power to take possession - Power to take possession - Power to take possession - Power to take possession -

Power to take possession - Release of property in certain cases - Release of property in certain cases - Release of property in certain cases - Release of property in certain cases - Application - Application - Application - Application - Application - Application - Application - Application - Fine in lieu of forfeiture

[Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988](#), [Section 3\(1\)](#), [Section 3\(1\)](#) - Power to make orders detaining certain persons

**Citation :** (2017) 05 AHC CK 0037

**Hon'ble Judges :** Devendra Kumar Arora, Ravindra Nath Mishra

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. Heard Sri A.P. Mishra, learned Counsel for petitioners and Sri Shiv P. Shukla, learned Counsel appearing for the Union of India.

2. In the aforesaid Writ Petition No.8391 (MB) of 2017 and 7953 (MB) of 2017, petitioners have challenged the order dated 16.03.2017 passed by the Competent Authority and Administrator, SAFEM (FOP)A & NDPSA, New Delhi under Section 68-I(1) & (3) of the Narcotics Drugs and Psychotropic Substances Act (in short "NDPS Act"), whereby the properties mentioned therein has been forfeited to the Central Government free from all encumbrances. The petitioners have also challenged the consequential order dated 17.03.2017 passed under Section 68-U of the NDPS Act, whereby the petitioners have been asked to surrender possession of the properties mentioned in the order within 30 days of the service of the order.

3. It is said that the petitioner-Dev Shankar Mishra was arrested on 05.03.2003 by the Officials of Narcotics Department, Lucknow at his house situated in Village Kharsatiya, Police Station Haidargarh, District Barabanki in connection with the offences under Sections 8/15/18/19 of NDPS Act. According to the prosecution case, the petitioner was arrested from his house on the basis of secret information and after search about 1109.540 Kg. Poppy Husk kept in 47 Bags as well as about 20 Kg. opium along with about Rs.2.89 lac cash from the house and Rs.29,100/- from the counter of Dhaba situated in Village Kharsatiya along with about 318.650 Kg. Poppy Husk was recovered and after recovery of the alleged Poppy Husk, Opium and cash amount, the petitioner-Dev Shankar Mishra was arrested on 05.03.2003 by the officers of Narcotics Department, Lucknow.

4. The Investigating Officer prepared list of the Property of Schedule identifying as illegally acquired properties of the petitioner-Dev Shankar Mishra along with his relatives and associates under Section 68-E of NDPS Act. In this background, the Investigating Officer passed an order under Section 68-F (1) of NDPS Act for seizure and freeze of illegally acquired properties of the petitioner on 12.11.2003

in F. No. XV ? 11 ( 2 ) Prev./ Freezing/ 03/3296 and sent the same for confirmation as required under Section 68-F (2) to the Competent Authority, Narcotics Drugs and Psychotropic Substances Act, 57-RF, Bahadurji Marg, Lucknow, annexing the list of schedule of holding illegal acquired properties of the petitioner-Dev Shankar Mishra, his relatives and associates. The reason for passing order under Section 68-F of NDPS Act has been assigned that petitioner-Dev Shankar Mishra is the person of Section 68-A (2)(cc) of NDPS Act, who has been arrested on 05.03.2003 hence by exercising powers under Section 68-E (1) of NDPS Act, mentioned properties in the list of Schedule of Properties and all properties should not be transferred or sale without the permission of Investigating Officer (his or from the competent authority) by petitioner-Dev Shankar Mishra and others. The Competent Authority passed confirmation order on 12.12.2003 under Section 68-F (2) of NDPS Act confirming the order dated 12.11.2003 passed by the Investigating Officer under Section 68-F (1) exercising his power under Section 68-E of NDPS Act, vide F. No. Lko/CA/NDPS/25/2003-746.

5. According to the learned Counsel for the petitioners, the mandate of Section 68-H(1) after confirmation of order under Section 68-F (2) recorded reason of believe, that since petitioner-Dev Shankar Mishra is a person against whom an order of detention vide F No.125/2/34/2003-CX-5 dated 09.03.2004 was passed by the Government of Uttar Pradesh under Section 3(1) of The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act) and the said order of detention dated 09.03.2004 has neither been revoked on the advice of the Advisory Board nor has been set- aside by any court of competent jurisdiction. Hence the petitioner is falling within the definition of Section 68-A (2)(c) of NDPS Act. The movable and immovable properties of petitioner-Dev Shankar Mishra as per schedule of the properties annexed to his notice were seized/ freeze by the Investigating Officer of Central Bureau of Narcotics, Lucknow vide order dated 12.11.2003, which was confirmed by the Competent Authority, Lucknow on 10.12.2003 under Section 68-F (2) NDPS Act. Hence all provision as contained in Chapter V-A of NDPS Act are applicable upon him. The Competent Authority issued show cause notice along with recorded "reason of believe" on 01.07.2004 in F. No. Lko/CA/NDPS/27/2003/195 to 220, calling him to submit his reply within a period of 30 days, to explain that why all or any properties mentioned in the enclosed schedule of the list of the properties should not be declared to be illegally acquired properties and forfeited to Central Government.

6. It is well settled preposition of law that a criminal appeal preferred by a person against any conviction is continuation of trial. Therefore, during pendency of criminal appeal filed by Petitioner-Dev Shanker Mishra before this Court, neither he can be said to be finally convicted person for the charges levelled against to him nor he can be deemed to be a person otherwise until and unless the appeal preferred by him is not being decided by High Court.

7. Learned Counsel for the petitioners Sri A.P.Mishra has vehemently argued that against the order of conviction, the appeal preferred by the petitioner is pending before this Court and as such he cannot be said to be finally convicted persons for the charges levelled against nor he can be deemed to be person otherwise and as such in view of the provisions of the provisions of Section 68-Z of the Act, the seized properties shall not be forfeited or frozen.

8. In contrast, Counsel for the respondents has raised a preliminary objection regarding maintainability of the writ petitions on the ground that the petitioners have directly rushed to this court without availing the statutory remedy provided under Section 68-O of the NDPS Act and has relied upon various decisions of this Court as well as of the Apex Court. It has been conveyed that petitioners can very well raised the pleas which they have raised here before the Appellate Tribunal.

9. It has also been pointed out by him that Petitioner-Dev Shanker Mishra has now been convicted in S.T. No. 185/2003 by learned Special Judge F.T.C. Court No. 29, District- Barabanki, on 29.08.2007 and Criminal Appeal has been preferred before Hon"ble High Court of Lucknow Bench, vide Criminal Appeal No. 2282/2007 and the same is still pending. It has also been asserted that the petitioner is a person covered under Section 68A(2) (a) of the NDPS Act, 1985 and properties were traced and identified by Central Bureau of Narcotics which falls within the ambit of Section 68-E of the Act

10. First of all, we would like to deal the objections raised by the respondents" Counsel regarding non-exhaustion of alternative remedy by the petitioners. Section 68-O of the Act deals with the presentation of appeals, if he is aggrieved in any manner and it reads as under:- "(1) 1[ Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68-I, sub-section (I) of section 68K or section 68L, may, within 45 days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal: Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm or set aside the order appealed against. (3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in subsection (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal. Provided that if the members of a Bench so constituted differ on any point or

points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that members.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorized in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof."

11. A perusal of the aforesaid section reveals that any person aggrieved by an order of the competent authority passed under Section 68-F, Section 68-I, sub section(1) of Section 68-K or Section 68-L has been given statutory right of Appeal before the Appellate Tribunal. The petitioners herein have challenged the order dated 16.3.2017 passed in exercise of powers conferred under Section 68-I of the NDPS Act.

12. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions one of which is that if an statutory, effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. In this context, we may observe that the existence of alternative remedy is not an absolute bar, is a legal proposition, which has been propounded by the Apex Court and this Court in series of cases. It would be useful to refer the decisions rendered by the Apex Court in this regard.

13. In *Thansingh Nathmal v. Superintendent of Taxes*; [AIR 1964 SC 1419], the Apex Court adverted to the rule of self-imposed restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: "The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved Petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up." In *Titaghur Paper Mills Company Ltd. v. Suite of Orissa* (1983) 2 SCC 433 the Apex Court while examining the question of availability of alternative remedy observed as under:

"It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes,

J. in *Wolverhampton New Waterworks Company v. Hawkesford* : 141 ER 486 in the following passage:

"... There are three classes of cases in which a liability may be established founded upon a statute.....But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it....The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* : (1918-19) All ER Rep. 61 (HL) and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Company Ltd and Secy, of State v. Mask and Company*; (1939-40) 67 IA 222: AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

In *Mafatlal Industries Ltd. v. Union of India*; (1997) 5 SCC 536 , it has been observed by the Apex Court that:

"So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. In the case of *L. Chandra Kumar Vs. Union of India* and others, reported in AIR 1997 SC 1125 , a seven Judges Constitution Bench of Hon"ble Supreme Court held as under:- "Though judicial review in the basic feature of the Constitution, the vesting of power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court." In the case of *Karnataka Chemical Industries and others vs. Union of India* and others (2000) 10 SCC 12 , it was held that: "When there is no challenge to the validity of any statutory provision, we see no reason as to why a writ petition should have been filed by passing the alternative remedy which is provided under the statute. On the short ground, we dismiss this appeal, vacate the interim orders, direct the payment of the balance amount of duty alongwith interest @ 15% per annum with yearly rests. It will be open to the appellant to avail of such statutory remedy as may be available to it. If an appeal is filed within four weeks from today, the Department will take a lenient view in condoning the delay." In the case of *Central Coalfields Ltd. vs. State of Jharkhand* and others (2005) 7 SCC, 492, it has been held that : "If there is statutory alternative remedy available to a person under an statute itself, in that

case the writ petition should not be entertained under Article 226 of the Constitution of India and the petitioner is directed to avail the alternative statutory remedy."

14. In *United Bank of India Vs. Satyawati Tondon and others*; (2010)8 SCC 110 the Apex Court while dealing with the issue whether the alternative statutory remedy available under the Act can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked, observed in paragraph 55 as under:- "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with great caution, care and circumspection.

15. In the case of *Kanhaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others*, (2011) 2 SCC 782 the Hon"ble Supreme Court on the question of alternative remedy/exhaustion of remedies held that Articles 226/227 not available if an efficacious alternative remedy is available to aggrieved person. Relevant paragraphs 23 and 24 of said judgment read as under: "23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if any efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh Vs. National Insurance Co. Ltd.*, *Surya Dev Rai Vs. Ram Chander Rai* and *SBI Vs. Allied Chemical Laboratories*). 24. In *City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwalla*, (2009) 1 SCC 168, this Court had observed that: (SCC p. 175, para 30)

"30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether: (a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved; (b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) the person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

16. Recently, the Hon"ble Supreme Court in Civil Appeal No. 10706 of 2011 (*Nivedita Sharma Versus Cellular Operators Assn. Of India and others*) decided on 07.12.2011, considered the question of alternative remedy/exhaustion of

remedies and has held that Articles 226/227 are not available if an efficacious alternative remedy is available to aggrieved person. The relevant paragraphs of the aforesaid judgment reads as under:- "We have considered the respective arguments/ submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation L. Chandra Kumar v. Union of India; (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency / instrumentality or any public authority or order passed by a quasi-judicial body/ authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

17. Hon"ble Apex Court recently in case of Commissioner of Income Tax v. Chhabil Dass Agrawal[(2014) 1 SCC 603 has held that when the statutory forum is created by law for redressal of grievances, the writ petition should not be entertained ignoring statutory dispensation subject to certain exceptions. The Hon"ble Apex Court further opined that non-entertainment of petitions under the writ jurisdiction by the High Courts where efficacious or alternative remedy is available, is a rule of self- imposed limitation. The Hon"ble Apex Court has also opined that undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India despite existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or if there is sufficient grounds to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, by a series of decisions it has been settled that the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power, if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

18. Thus it is apparent that the petitioners have rushed directly to this Court and have by-passed the statutory alternative remedy, which is not permissible in view of the aforesaid settled position. It may be noted that when an alternative and equally efficacious statutory remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the extra ordinary jurisdiction

of the High Court to issue a prerogative writ as the writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.

19. In the case of Whirlpool Corporation vs. Registrar of Trade Marks (1998 (8) SCC 1), which has been relied upon by the petitioners, the Hon'ble Apex Court has carved out two exceptions for entertaining the writ petition, i.e., (1) if the order passed by the authority is without jurisdiction and (2) in case the order has been passed in breach of principles of natural justice. The petitioner's case does not fall in either of the two categories. Moreover, in view of the legal position discussed hereinabove, the case laws relied upon by the petitioners are of no avail to him. The judgment rendered in Aftab Abdul Rehman Chatriwala versus State of Karnataka ; 1995(1) Crimes 224 is also of no avail to petitioners as in that case legality and validity of the detention order under the provisions of COFEPOSA was challenged whereas in the instant case, it is an admitted fact that the petitioner has been convicted by the competent court under Sections 8/15/18/19 NDPS Act.

20. Coming to the case at hand, it is not contended by the learned counsel for the petitioner that the Competent Authority/Administrator has no jurisdiction to pass the impugned order under the Act. Neither it is pleaded nor asserted that there has been violation of principles of natural justice. It is also not the case where the petitioner seeks to enforce any fundamental rights. The only ground of challenge in this writ petition is that the evidence collected is insufficient to come to the conclusion as arrived by the Competent Authority.

21. In view of the above legal position, this Court comes to the conclusion that writ petition Nos. 8391 and 7953 of 2017 (M/B) are not maintainable. The writ petitions are dismissed. However, the petitioners are at liberty to file an appeal before the appellate authority and agitate all grounds taken in the writ petition. It is further provided that in the event appeal is preferred by the petitioners within a period of three weeks, same shall be decided by the Appellate Tribunal on merits within a maximum period of four months in accordance with law, after due opportunity to all concerned. Keeping in view the peculiar facts of the case, parties shall bear their own costs.

22. In other afore-captioned writ petitions, namely, writ petition no. 4692 (MB) of 2017, writ petition no. 5231(MB) of 2016 and Writ Petition No. 5236 (MB) of 2017, petitioners have inter-alia sought for quashing the notice dated 30.12.2016 issued under Section 68H(1) of the NDPS Act, 1985 whereby the petitioners were required to indicate the source of income , earnings or assets out of which or by means of which they have acquired or possessed or has interest in the property.

23. The writ petitions against the show cause notice are not maintainable. At this juncture, it would be useful to mention that in the case of Union of India V. Vicco Laboratories" ? 2007 (11) TMI 21 - SUPREME COURT OF INDIA (2007) 12 SCR 524the Supreme Court held that normally the writ should not interfere at the

stage of issuance of show cause notice by the authorities. In such a case the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show cause notice has been issued. Abstention from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However the said rule is not without any exceptions. Where a show cause notice is issued either without jurisdiction or an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere ascertain by the petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should prima facie be established. Where factual adjudication would be necessary interference is ruled out.

24. In "AGV Altab Limited V. Commissioner of Central Excise, 2011 (3) TMI 1107 - the Delhi High Court held that it cannot be disputed that the Commissioner of Central Excise has jurisdiction to decide and go into the said questions by issue of notice under Section 118 of the Custom Act. The said authority can adjudicate and decide the objection and contention raised by the petitioner. In these circumstances the High Court was not inclined to entertain the Writ Petition against the show cause notice and the petitioner is given liberty to file reply and the Commissioner of Central Excise will decide the case after giving reasonable opportunity to the petitioner.

25. The Hon'ble Supreme Court and High Courts in a large number of cases have deprecated the practice of entertaining writ petitions questioning the legality of the show cause notices stalling enquiries as proposed and retarding investigation process to find actual facts with the participation. Unless the High Court is satisfied that the show cause notice was totally honest in the eyes of law for absolute want of jurisdiction of the authority to even investigate into the fact, writ petitioners will not be entertained for the mere asking and as a matter of routine. The writ petitioners in such cases are directed to respond to the show cause notice and take all stands highlighted in the writ petition before the Adjudicating Authority.

26. Issuance of show cause notice is a statutory provision subject to limitation. The purpose of its issuance is to seek a reply for the proposed actions thereunder, before initiation of adjudication proceedings. In other words, show cause notice is merely answerable and not questionable in a writ proceeding. Therefore, afore-captioned writ petitions [writ petition Nos. 4692, 5231 and 5236 of 2017 (M/B)] are not maintainable and are liable to be dismissed. Even otherwise, in view of the passing of final order dated 16.3.2017, these writ petitions are rendered infructuous and are hereby dismissed as such.