(2010) 04 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Kashmir Chand and Another — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 17, 17A, 17B, 18, 18B
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 21, 22, 29, 8
Penal Code, 1860 (IPC) — Section 116

Citation : (2010) 04 P&H CK 0126

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Prayer in the present petition is for quashing of FIR No. R.C. SIB 2006 E 003, dated 5.2.2006 registered u/s 29 read with Sections 8 and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as ''NDPS Act, 1985) and 27 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as ''the D&C Act, 1940) at Police Station I/EOU.V, New Delhi (Annexure P-1) on the ground that no offence under the N.D.P.S. Act, 1985 is made out against the petitioners and for the offence u/s 27 of the D&C Act, 1940. No FIR could be registered u/s 32 of the D&C Act, 1940 and only the complaint could have been filed before the competent Court.

2. Counsel for the petitioners contends that petitioner No. 1 Kashmir Chand was the proprietor of M/s Suraj Medical Agency, Court Road, Moga and petitioner No. 2 Roshan Lal was the competent employee under the D&C Act, 1940 and the Rules, of the firm at the time when a joint raid was conducted by the Central Bureau of Investigation along with the officers of Drug Department of Punjab at the business premises where the business of medicines under Drugs License No. 54850W and 5267W was being done. The license was renewed from time to time and was issued by the State Drug Controlling and Licensing Authority, Chandigarh. The petitioners were authorized stockists and were doing the

business of medicines as per the License issued by the Licensing Authority.

3. On 01.09.2006, a joint raid was conducted by the Central Bureau of Investigation along with officers of the Drug Department of Punjab on the business premises in the presence of petitioner No. 2. Certain contraventions were found at the time of the said inspection/raid. Petitioner No. 2 could not produce the purchase record of 19270, 2ml ampoules of Bup-Norphine batch No. 1451 manufactured by M/s Global Labs, Mohali. Proceedings were initiated for cancellation of the license for the violation of its terms and the license of the petitioner was cancelled by the State Drug Controlling and Licensing Authority Punjab, Chandigarh vide order dated 19.09.2008. It so transpired that initially a case was registered in Central Bureau of Investigation/Economic Offences Unit-V Branch, New Delhi on 05.02.2006 against accused persons namely Kunal Kaushal, Kanhiya Lal, Rahul Goyal and Manish Goyal, all residents of District Muzaffarnagar, Uttar Pradesh under Sections 8, 22 read with Section 29 of the NDPS Act, 1985 as they were allegedly found in possession of G-Norphine Buprenorphine injections at Shamli, District Muzaffarnagar, Uttar Pradesh on 04.02.2006 without any valid authority/documents. After investigation, charge-sheet in the said case was presented against 51 accused persons/firms including petitioners in the Court of Special Judge, NDPS Cases, Muzaffarnagar, Uttar Pradesh. On the basis of the raid conducted at the business premises of the petitioners, new charge-sheet was presented against the petitioners before the learned Special Judge, Moga (Annexure A-1). He submits that in one F.I.R., trial cannot be held at two places i.e. one at Muzaffarnagar and the other at Moga. His further submission is that the petitioners have been falsely implicated in the present case. The alleged recovery of medicines does not fall u/s 29 read with Sections 8 and 22 of the NDPS Act, 1985 and u/s 27 of the D&C Act, 1940. Moreover, if any violation is found as per the allegations, only the complaint u/s 18B of the D&C Act, 1940 could be filed by the Drugs Inspector, who has been authorized under Sections 21 and 22 of the D&C Act, 1940 to search and seize the medicines . If such a complaint is lodged and that to, with a competent Court as per Section 32 of the D&C Act, 1940 and the petitioners are found guilty, the penalty can be imposed only u/s 28A of the D&C Act, 1940. He contends that the offence u/s 27 of the D&C Act, 1940 is not made out against the petitioners as penalty u/s 27 of the D&C Act, 1940 can be imposed only on the persons who had violated the provisions of Sections 17, 17A and 17B of the D&C Act, 1940. As per the allegations and evidence available on record, the petitioners have not violated any of the provisions attracting the penalty u/s 27 of the D&C Act, 1940 as the alleged recovered drug does not fall under misbranded, adulterated and spurious drugs.

4. As regards the offence u/s 22 of the NDPS Act is concerned, he contends that the narcotic substance, which has been recovered from the petitioners, is a drug which does not fall under the schedule of NDPS Act. Bup-Norphine is a scheduled "H" drug under the D&C Act, 1940 and further as per Chapter 7 of the psychotropic substance mentioned in the Narcotic Drugs and Psychotropic

Substance Rules, 1985, the said psychotropic substance does not fall in Schedule-I, so the same cannot be covered under the NDPS Act. In support of this contention, counsel for the petitioners relies upon the judgment of Delhi High Court in the case of Rajinder Gupta Vs. The State, as also the judgment of the Hon''ble Supreme Court in the case of State of Uttaranchal v. Rajesh Kumar Gupta 2006 (4) RCR (Criminal) 974. In support of the contention that since the petitioners were holding a valid license under the D&C Act, the possession of the narcotic substance, which has been recovered from the petitioners, would not amount to violation of the provisions of the NDPS Act but would be covered by the provisions of the D&C Act as it would amount to violation of the conditions of license as it is alleged that petitioner No. 2 was unable to produce the proof of purchase record of 19270 2ml ampoules of Bup-Norphine batch No. 1451 manufactured by M/s Global Labs, Mohali, he relies upon the judgment of this Court in the case of Deep Kumar and Others Vs. State of Punjab, , Tejinder Singh @ Monto v. State of Punjab 1997 (3) RCR (Criminal) 645, Leela Ram v. State of Punjab 2002 (3) RCR (Criminal) 805. Counsel submits that Section 8 of the NDPS Act, 1985 will not be attracted to the present case in the light of Section 22 of the NDPS Act as also Rules 64 to 67 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as ''NDPS Rules, 1985) which specifically provide for the exemption whether the D&C Act and the Rules framed thereunder are applicable to the possession of the psychotropic substances. He, on this basis, contends that no offence is made out against the petitioners and, therefore, the impugned FIR (Annexure P-1) deserves to be quashed.

5. On the other hand, counsel for the respondent submits that during the course of investigation in the FIR, a raid was conducted at the premises of M/s Gold Star Pharmaceuticals Pvt. Ltd. Moga, Punjab as it came to the notice of the investigating agency that apart from M/s Gold Star Pharmaceuticals Pvt. Ltd., the directors of the said company were running two other medical shops/firms in the name of M/s Suraj Medical Agencies, Moga, Punjab and M/s Suraj Medical Store, Moga, Punjab. Since sufficient evidence, oral as well as documentary, had emerged in the record of the case against the accused persons including the petitioners, a charge-sheet against them was filed in the Court of competent jurisdiction at Moga on 26.02.2009 as this being a separate distinct offence/ conspiracy/incident though detected during the course of investigation, the Special Judge, Moga had taken cognizance of the charge-sheet filed by the respondent-CBI and had issued non-bailable warrant of arrest against the accused persons including the petitioners. He submits that the contention raised by the petitioners that for an FIR, which has been registered at Delhi, already charge-sheet has been submitted before the Special Judge, NDPS Cases, Muzaffarnagar, Uttar Pradesh and, therefore, charge-sheet cannot be submitted at Moga. He states that a Transfer Petition (Crl.) No. 245 of 2009 was preferred by Rajinder Kapoor, Proprietor of M/s Global Laboratories, Mohali, Punjab, who is a co-accused with the petitioners, before the Hon''ble Supreme Court, which ground has not been accepted by the Hon''ble Supreme Court and upon hearing

the counsel for the parties, the said Transfer Petition stands dismissed vide order dated 13.11.2009. He thus contends that the stand of the petitioners cannot be accepted and the charge-sheet filed against the petitioners is in accordance with law. His further contention is that the recovery, which has been effected from the petitioners clearly falls under the provisions of the NDPS Act, 1985 as Bupre-Norphine is a psychotropic substance which finds mention at Sr. No. 92 of the Schedule attached to the Act. Psychotropic substances have been defined u/s 2(xxiii) of the NDPS Act, 1985. He contends that Buprenorphine Hydrochloride is listed as Schedule ''H'' Drug under the Drugs and Cosmetic Rules, 1945 (hereinafter referred to as D&C Rules, 1945). Rule 97 of the D&C Rules, 1945 clearly states that substance listed under Schedule ''H'' as well as under the NDPS Act shall come within the purview of D&C Act, 1940 as well as under the NDPS Act, 1985. He, on this basis, contends that the offence under the NDPS Act, 1985 is clearly made out against the petitioners and thus, FIR registered against the petitioners as also the charge-sheet submitted before the Special Judge, Moga deserves to be upheld.

6. I have heard the counsel for the parties and have gone through the records of the case.

7. For understanding the intricacies of the provisions of the NDPS Act, 1985, NDPS Rules, 1985 and its co-relationship with the D&C Act, 1940 and the D&C Rules, 1945, the reference to the provisions of the said Acts and Rules would be essential. The relevant Sections under the NDPS Act would be Section 2(xxiii), Section 8, Section 21, Section 22, Section 29, Section 80 and the relevant Rules would be Rules 64 to 67 of the NDPS Rules, 1985 and Rules 65 and 97 of the D&C Rules, 1945. Section 2(xxiii) of the NDPS Act, 1985 reads as follows:

2 (xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

8. The Schedule to the Act gives a list of psychotropic substances. Entry No. 92 makes Buprenorphine as a psychotropic substance.

9. Section 8 of the NDPS Act, 1985 reads as follows:

8. Prohibition of certain operations.-No person shall-(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import interState, export inter-State, import into India, export from India or transship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of license, permit or authorization also in accordance with the terms and conditions of such license,

permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

10. Section 21 of the NDPS Act, 1985 reads as follows:

[21. Punishment for contravention in relation to manufactured drugs and preparations.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

11. Section 22 of the NDPS Act, 1985 reads as follows:

[22. Punishment for contravention in relation to psychotropic substances.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity, lesser than commercial quantity

but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

12. Section 29 of the NDPS Act, 1985 reads as follows:

29. Punishment for abetment and criminal conspiracy.-

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this Section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

13. Section 80 of the NDPS Act, 1985 reads as follows:

80. Application of the Drugs and Cosmetics Act, 1940 not barred.-The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

14. Rules 64 to 67 of the NDPS Rules, 1985, on which reliance has been heavily made by the counsel for the petitioners, read as follows:

64. General prohibition.-No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule I.

65. Manufacture of psychotropic substances.-(1) Subject to the provisions of Sub-rule (2), the manufacture of any of the psychotropic substances other than those specified in Schedule I shall be in accordance with the conditions of a license

granted under the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 1945 Rules) framed under the Drugs and Cosmetics Act, 1940 (23 of 1940), by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf:

[Provided that the authority in charge of drug control in a State referred to above may issue a license to manufacture a psychotropic substance specified in Schedule III for the purpose of export only;]

(2) The authority in charge of drugs control in a State (hereinafter referred to as the Licensing Authority) shall consult the Drugs Controller (India) in regard to the assessed annual requirements of each of the psychotropic substances in bulk form referred to in Sub-rule (1) in the country and taking into account the requirement of such psychotropic substances in the State, the quantity of such substance required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, shall specify, by order, the limit of the quantity of such substance which may be manufactured by the manufacturer in the State.

(3) The quantity of the said psychotropic substance which may be manufactured by a licensee in an year shall be intimated by the Licensing Authority to the licensee at the time of issuing the license:

[Provided that nothing contained in this rule shall apply in case the psychotropic substances specified in Schedule I are manufactured, possessed, transported, imported, inter State, exported inter-State, sold, purchased, consumed or used subject to other provisions of this Chapter which applies to psychotropic substances which are not included in Schedule I and for the purposes mentioned in Chapter VIIA:

Provided further that the authority in charge of the drug control in a State referred to in Sub-rule (2) of rule 65 shall consult the Narcotics Commissioner before issuing a license under rule 65 in respect of psychotropic substances included in Schedule I [and Schedule III].]

66. Possession, etc., of psychotropic substances.-(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in Sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorized to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorized under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or

dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

[Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time [but not exceeding three hundred dosage units at a time] for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.]

(3) The research institution, hospital and dispensary referred to in Sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.

67. Transport of psychotropic substance.-(1) Subject to the provisions of rule 64, no consignment of psychotropic substance shall be transported, imported inter-State or exported inter-State unless such consignment is accompanied by a consignment note in [Form 6] appended to these Rules and in the manner as provided hereinafter.

(2) The consignment note referred in Sub-rule (1) shall be prepared in triplicate, and the original and duplicate copies of the said note shall be sent along with the consignment of psychotropic substances to the consignee who shall return the duplicate copy of the note to the consignor for his use after endorsing on the original and duplicate copies the particulars of the receipt of the quantity consigned.

(3) the consignor shall make necessary entries on the triplicate copy of the said note with reference to the receipt of quantity of the psychotropic substances indicated on that duplicate copy of the note.

(4) the consignor and consignee shall keep such consignment note for a period of two years and the said note may be inspected at any time by an officer authorized in this behalf by the Central Government.

[Provided that consignment note in Form 6 shall not apply in cases where the sale of the psychotropic substance is accompanied by a sale bill or invoice or cash memo or any other document duly signed by the consignor or his authorized signatory, which shall include the following information about the consignment:

(a) name, address and license number of the consignor and the consignee;

(b) description, batch number and quantity;

(c) mode and particulars of transport:

Provided further that such document shall be preserved by consignor and consignee for a period of two years for inspection by the officers referred to in Sub-rule (4) above. Explanation.-Where the consignee is a research institution,

registered medical practitioner, hospital or dispensary, the requirement of incorporating license number of consignee shall not be applicable.]

15. Rules 65 and 97 of the D&C Rules, 1945, reliance whereon has been laid by the counsel for the respondent, read as follows:

65. Condition of licences: -Licences in [Forms 20, 20A, 20B, 20F, 20G, 21 and 21-B] shall be subject to the conditions stated therein and to the following general conditions:

[(1)Any drug shall, if compounded or made on the licensee''s premises, be compounded or made by or under the direct and personal supervision of a registered Pharmacist]].

(2)The supply, otherwise than by way of wholesale dealing [* * *] of any drug supplied on the prescription of a Registered Medical Practitioner shall be effected only by or under the personal supervision of a [registered Pharmacist].

[3] (1) The supply of any drug (other than those specified in Schedule X) on a prescription of a registered medical practitioner shall be recorded at the time of supply in a prescription register specially maintained for the purpose and the serial number of entry in this regard shall be entered on the prescription. The following particulars shall be entered in the register--

(a) serial number of the entry,

(b) the date of supply,

(c) the name and address of the prescriber,

[(d) the name and address of the patient, or the name and address of the owner of the animal if the drug supplied is for veterinary use,]

(e) the name of the drug or preparation and quantity or in the case of a medicine made up by the licensee, the ingredients and quantities thereof,

(f) in the case of a drug specified in [Schedule C or Schedule H] the name of manufacturer of the drug, the batch number and the date of expiry of potency, if any,

(g) the signature of the [registered Pharmacist] by or under whose supervision the medicine was made up or supplied.

Provided that in the case of drugs which are not compounded in the premises and which are supplied from or in the original containers the particulars specified in items (a) to (g) above may be entered in a cash or credit memo book, serially numbered and specially maintained for this purpose.

Provided further that if the medicine is supplied on a prescription on which the medicine has been supplied on a prescription previous occasion and entries made in the prescription register it shall be sufficient if the new entry in the register

includes a serial number, the date of supply, the quantity supplied and a sufficient reference to an entry in the register recording the dispensing of the medicine on the previous occasion:

Provided further that it shall not be necessary to record the above details in the register or in the cash or credit memo particulars in respect of--

(i) any drugs supplied against prescription under the Employees State Insurance Scheme if all the above particulars are given in that prescription, and

(ii)any drugs other than that specified in [Schedule C or Schedule H] if it is supplied in the original unopened container of the manufacturer and if the prescription is duly stamped at the time of supply with the name of the supplier and the date on which the supply was made and on condition that the provisions of Sub-rule (4) (3) of this rule are complied with.

(2) The option to maintain a prescription register or a cash or credit memo book in respect of drugs and medicines which are supplied from or in the original container, shall be made in writing to the licensing authority at the time of application for the grant or renewal of the licence to sell by retail:

Provided that the Licensing Authority may require records to be maintained only in prescription register if it is satisfied that the entries in the carbon copy of the cash or credit memo book are not legible.

(4) (1)The supply by retail, otherwise than on a prescription of a drug specified in Schedule C {**8} shall be recorded at the time of supply either--

(i) in a register specially maintained for the purpose in which the following particulars shall be entered--

(a) serial number of the entry,

(b) the date of supply,

(c) the name and address of the purchaser,

(d) the name of the drug and the quantity thereof.

(e) in the case of a drug specified in Schedule C, he name of the manufacturer, the batch number and the date of expiry of potency,

(f) the signature of the person under whose supervision the sale was effected, or

(ii) in a cash or credit memo book, serially numbered containing all the particulars specified in items (b) to (f) or sub-clause (i) above.

Note: - The entries in the carbon copy of the cash or credit memo which is retained by the licensee shall be maintained in a legible manner.

(2)The option to maintain a register or cash or credit memo book shall be made in writing to the Licensing Authority at the time of application for the grant or

renewal of a licence to sell by retail.

(3) (i) the supply by retail of any drug shall be made against a cash/credit memo which shall contain the following particulars:

(a) Name, address and sale licence number of the dealer,

(b) Serial number of the cash/credit memo,}

(c) the name and quantity of the drug supplied.

(ii) Carbon copies of cash/credit memos shall be maintained by the licensee as record.

[(4)(i) Records of purchase of a drug intended for sale or sold by retail shall be maintained by the licensee and such records shall show the following particulars, namely:

(a) the date of purchase,

(b) the name and address of the person from whom purchased and the number of the relevant licence held by him,

(c) the name of the drug, the quantity and the batch number, and

(d) the name of the manufacturer of the drug.

(ii) Purchase bills including cash or credit memos shall be serially numbered by the licensee and maintained by him in a chronological order}.

(5)(1) Subject to the other provisions of these rules the supply of a drug by wholesale shall be made against a cash or credit memo bearing the name and address of the licensee and his licence number under the Drugs and Cosmetics Act in which the following particular shall be entered -

(a) the date of sale,

(b) the name and address of the licensee to whom sold and his sale licence number. In case of sale to an authority purchasing on behalf of government, or to a hospital, medical, educational, or research institution or to a Registered Medical Practitioner for the purpose of supply to his patients the name and address of the authority, institution or the Registered Medical practitioner as the case may be.

(c) the name of the drug, the quantity and the batch number,

(d) the name of the manufacturer,

{(e) the signature of the competent person under whose supervision the sale was effected.}

(2) Carbon copies of cash or credit memos specified in clause (1) shall be preserved as records for a period of three years from the date of the sale of the

drug.

{(3) Records of purchase of a drug intended for resale or sod by wholesale shall be maintained by the licensee and such records shall show the following particulars, namely:

(a) the date of purchase,

(b) the name, address and the number of relevant licence held by the person from whom purchased,

(c) the name of the drug, the quantity and the batch number, and

(d) the name of the manufacturer of the drug.

(ii) Purchase bills including cash or credit memos shall be serially numbered by the licensee and maintained by him in a chronological order.}

(6) The licensee shall produce for inspection by an Inspector appointed under the Act on demand all registers and records maintained under these Rules, and shall supply to the Inspector such information as he may require for the purpose of ascertaining whether the provisions of the Act and rules thereunder have been observed.

(7) Except where otherwise provided in these Rules, all registers and records maintained under these Rules shall be preserved for a period of not less than two years from the date of the last entry therein.

(8) Notwithstanding anything contained in this Rule it shall not be necessary to record any particulars in a register specially maintained for the purpose if the particulars are recorded in any other register specially maintained under any other law for the time being in force.

[(9) (a) Substances specified in Schedule H or Schedule X shall not be sold by retail except on and in accordance with the prescription of a Registered medical practitioner and in the case of substances specified in Schedule X, the prescriptions shall be in duplicate, one copy of which shall be retained by the licensee for a period of two years.

(b) The supply of drugs specified in Schedule H or Schedule X to Registered Medical Practitioners, Hospitals, Dispensaries and Nursing Homes shall be made only against the singed order in writing which shall be preserved by the licensee for a period of two years.}

(10) For the purposes of Clause (9) a prescription shall--

(a) be in writing and be signed by the person giving it with his usual signature and be dated by him;

[(b) specify the name and address of the person for whose treatment it is given, or the name and address of the owner of the animal if the drug is meant for

veterinary use;]

(c) indicate the total amount of the medicine to be supplied and the does to be token.

(11) The person dispensing a prescription containing a drug specified in Schedule h (and Schedule X) shall comply with the following requirements in addition to other requirements of these rules.

(a) the prescription must not be dispensed more than once unless the prescriber has stated thereon that it may be dispensed more than once;

(b) if the prescription contains a direction that it may be dispensed a stated number of times or at stated intervals it must not be dispensed otherwise than in accordance with the directions:

(c) at the time of dispensing a prescription containing substances specified in the signature of the prescriber, the name and address of the seller and the date on which the prescription is dispensed.

{(11-A) No person dispensing a prescription containing substances specified in (Schedule H or X), may supply any other preparation, whether containing the same substances or not in lieu thereof.}

{(12) Substances specified in Schedule X kept in retain shop or premises used in connection therewith shall be stored--.}

(a) under lock and key in cupboard or drawer reserved solely for the storage of these substances; or

(b) in a part of the premises separated from the remainder of the premises and to which only responsible persons have access.}

(13) {* * *}

(14) {* * *}

{(15) (a) the description "Drugstore" shall be displayed by such licensees who do not require the services of a (registered Pharmacist}.

(b) The description "Chemists and Druggists" shall be displayed by such licensees who employ the services of a (registered Pharmacist} but who do not maintain a "Pharmacy" for maintain a "Pharmacy" for compounding against prescriptions.

(c) The description "Pharmacy". "Pharmacist", "Dispensing Chemist" or "Pharmaceutical Chemist" shall be displayed by such licensees who employ the services of a (registered Pharmacist) and maintain a "Pharmacy" for compounding against prescription.

(Explanation- For the purpose of this rule,-

(i)"registered Pharmacist" means a person who is a registered Pharmacist as

defined in clause (i) of Section (2) of the Pharmacy Act, 1948 (Act 8 of 1948): Provided that the provisions of sub-clause (i) shall not apply to those persons who are already approved as "qualified person" by the Licensing Authority on or before the 31st December, 1969.

(ii) "Date of Expiry of Potency'' means the date that is recorded on the container, label or wrapper as the date upto which the substance may be expected to retain a potency not less than or not to acquire a toxicity greater than that required or permitted by the prescribed test.}

(16) The licensee shall maintain an Inspection Book (in Form 35) to enable an Inspector to record his impressions and the defects noticed.

[(17) No drug shall be sold or stocked by the licensee after the date of expiration of potency recorded on its container, label or wrapper, or in violation of any statement or direction recorded on such container, label or wrapper;

Provided that any such drugs in respect of which the licensee has taken steps with the manufacturer or his representative for the withdrawal, reimbursement or disposal of the same may be stocked after the date of expiration of potency pending such withdrawal, reimbursement or disposal, as the case may be , subject to the condition that the same shall be stored separately from the trade stocks (and all such drugs shall be kept in packages or cartons, the top of which shall display prominently, the words ''Not for sale''}}.

(18) No drug intended for distribution to the medical profession as free sample which bears a label on the container as specified in clause {(ix)} of Sub-rule (1) of Rule 96, and no drug meant for consumption by the Employees'' State Insurance Corporation, the Central Government Health Scheme, the Government Medical Stores Depots, the Armed Forces Medical Stores or other Government Institutions, which bears a distinguishing mark or any inscription on the drug or on the label affixed to the container thereof indicating this purpose shall be sold or stocked by the licensee on the premises:

{Provided that this sub-rule shall not be applicable to licensees who have been appointed as approved chemists, by the State Government in writing, under the Employees'' State Insurance Scheme, or have been appointed as authorised agent or distributor, by the manufacturer in writing, for drugs meant for consumption under the Central Government Health Scheme, the Government Medical Stores Depots, the Armed Forces Medical Stores or other Government Institutions for drugs meant for consumption under those schemes {or have been appointed as authorised Depots or carrying and Forwarding agent by the manufacturer in writing, for storing free samples meant for distribution to medical profession} subject to the conditions that the stock shall be stored separately from the trade stocks and shall maintain separate records of the stocks received and distributed by them.

{(19) The supply by retail of any drug in a container other than the one in which

the manufacturer has marketed the drug, shall be made only by dealers who employ the services of a (registered Pharmacist) and such supply shall be made under the direct supervision of the (registered Pharmacist) in an envelope or other suitable wrapper or container showing the following particulars on the label---

(a) name of the drug,

(b) the quantity supply,

(c) the name and address of the dealer.}

{(20) The medicines for treatment of animals kept in a retail shop or premises shall be labelled with the words "Not for human use- for treatment of animals only" and shall be stored-

(a) in a cupboard or drawer reserved solely for the storage of veterinary drug, or

(b) in a part of the premises separated from the remainder of the premises to which customers are not permitted to have access.}

{(21) (a) The supply of drugs specified in Schedule X shall be recorded at the time of supply in a register (bound and serially page numbered) specially maintained for the purpose and separate pages shall be allotted for each drug.

(b) the following particulars shall be entered in the said register, namely:

(i) Date of transaction:

(ii)Quantity received, if any, the name and address of the supplier and the number of the relevant licence held by the supplier:

(iii)Name of the drug;

(iv)Quantity supplied;

(v)Manufacturer''s name;

(vi)Batch No. or Lot No.;

(vii)Name and address of the patient/purchaser;

(viii)Reference Number of the prescription against which supplied were made;

(ix)Bill No. and date in respect of purchases and supplies made by him;

(x)Signature of the person under whose supervision the drugs have been supplied.}

Notes

Scope: - Rule 65(9) is restricted to the substances specified in Schedules H or L and preparations containing such substances, Medicines which do not fall within the description of substances specified in Schedule H or L and which are not

preparation s containing these substances can be sold by a chemist even without a prescription or a registered medical practitioner. Dr. Prakash Chandra Tiwari Vs. The State of Madhya Pradesh and Others, .

Expired date medicine: - There is nothing in the rules to make obligatory upon a licensee to destroy or throw away the stock as soon as it crosses the date of expiry. If for claiming rebate from income tax and sales tax departments the licensee keeps expired date medicines in his stock with the due precaution that everybody should know that the same were not intended for sale then he cannot be said to have committed any offence. Aftab Ahmad Vs. The State, .

Stocked: Meaning of: - The word "stocked" in Sub-rule (17) means stocked for sale and stocking drugs, labelled as "physician''s sample, not for sale" which are not meant to be sole is a violation of the rule read with Section 18(a)(vi) of the Act. The Public Prosecutor Vs. Mahaveer Prasad and Others,

Registered Medical Practitioner: - The expression "registered medical practitioner" does not include a Homoeopathic and Biochemic practitioner registered under the Homoeopathic and Biochemic Practitioners Act, Dr. Prakash Chandra Tiwari Vs. The State of Madhya Pradesh and Others, .

(65-A. Additional information to be furnished by an applicant for licence or a licensee to the licensing authority: - The applicant for the grant of a license or any person granted a licence under this Part shall, on demand, furnish to the licensing authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership of occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, or any other relevant matter which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee while applying for or after obtaining the licence , as the case may be.}

97. Labelling of medicines:- {(1) the container of a medicine for internal use shall-(a) if it contains a substance specified in Schedule G, be labelled with the words ''Caution: it is dangerous to take this preparation except under medical supervision''- conspicuously printed and surrounded by a line within which there shall be no other words''

(b) If it contains a substance in Schedule H be labelled with the symbol Rx and conspicuously displayed on the left top corner of the label and be also labelled with the following words:

''Schedule H drug- Warning: To be sold by retail on the prescription of a Registered Medical Practitioner only:

(c) If it contains a substance specified in Schedule H and comes within the purview of the (Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)} be labelled with the symbol NRx which shall be in red and conspicuously displayed on the left top corner of the label, and be also labelled with the

following words:

''Schedule H Drug- Warning: To be sold by retail on the prescription of a Registered Medical

Practitioner only:

(d) if it contains a substance specified in Schedule X, be labelled with the symbol XRx which shall be in red conspicuously displayed on the left top corner of the label, and be also labelled with the following words;

(2) The container of an embrocation, liniment, lotion (ointment, antiseptic cream,) liquid antiseptic or other liquid medicine for external application shall be labelled with the words in capital ''For External Use only.'')

(3) The container of a medicine made up ready only for treatment of an animal shall be labelled conspicuously with the words "Not for human use; for animal treatment only" and shall bear a symbol depicting the head of a domestic animal.}

[(4)] The container of a medicine prepared for treatment of human ailments shall if the medicine contains industrial methylated spirit, indicate this fact on the label and be labelled with the words:-"For External use only."

[(5) Substances specified in Schedule X in bulk form shall bear a label wherein the symbol as specified in Sub-rule (1) shall be given conspicuously in red letters.]

16. A perusal of the above provisions and especially Section 2(xxiii) of the Act with reference to the Schedule attached to the Act leaves no manner of doubt that Bup-norphine is a psychotropic substance. Now the question arises where a person has a valid license under the D&C Act, 1940 and the Rules framed thereunder would, merely because he is holding a license, be immune from the applicability of the provisions of the NDPS Act, 1985 and the Rules framed thereunder. It is not disputed by the petitioners that the Bupnorphine is a psychotropic substance. What has been contended by them is that since the petitioners possessed a valid license under the D&C Act, 1940 and the Rules framed thereunder on the date when the raid was conducted, they were entitled to possess the same and mere possession of the said psychotropic substance would not amount to an offence under the NDPS Act. Section 80 of the NDPS Act, 1985 provides that the provisions of the Act and the Rules made thereunder are in addition to and not in derogation of the D&C Act, 1940 or the Rules made thereunder. Even if it is said that obtaining of a license under the D&C Act and the Rules framed thereunder provides protection from the rigors of the applicability of the NDPS Act as provided under Rules 65 to 67 of the NDPS Rules, 1985 but still for claiming protection under the D&C Act, 1940 and the Rules framed thereunder, the requirement of the license and the conditions imposed under the provisions of the D&C Act and the Rules framed thereunder have to be complied with. The umbrella of protection under the D&C Act and the

Rules framed thereunder vanishes, the moment the provisions contained under the said Act and the Rules are not complied with or infringed or violated by the holder of the license. Merely holding a license under the D&C Act and the Rules framed thereunder does not provide an immunity from the rigors of the applicability of the NDPS Act and the Rules framed thereunder. The conditions of license have to be complied with. The petitioners have violated Rule 65 (4) (4) of the D&C Rules, 1945 as under this Rule, record of purchase of a drug intended for sale or sold by retail, is mandated to be maintained by the licensee and such record has to show the particulars, as have been mentioned in the said Rule. The licensee is mandated to maintain the purchase bills including cash or credit memos which the petitioners have failed to maintain. The petitioners have also violated the provisions of Section 65(5)(3) of the D&C Rules, 1945. By violating the conditions of the license, the protection provided under the D&C Act, 1940 and the Rules framed thereunder vanishes and the licensee is open to the rigors of the NDPS Act and the Rules framed thereunder. Counsel for the petitioners has very fairly stated that the petitioners do not possess any purchase bills nor do they have any explanation as to how these drugs came in their possession.

17. It would not be out of way to mention here that because of the violation of the above-mentioned provisions of the terms of License, proceedings for cancellation of the license were initiated against the petitioners and the license was cancelled by the State Drug Controlling and Licensing Authority, Punjab, Chandigarh vide order dated 19.09.2008. The said order was challenged in the High Court which stands dismissed.

18. The Hon''ble Supreme Court has, while dealing with a case of Bupnorphine, which psychotropic substance has been recovered from the present petitioners, in Hussain Vs. State of Kerala, , held in paras 7 and 8 as follows:

7. It is unnecessary for us to consider whether the said substance is a narcotic drug as defined in the Act, for, it is easily discernible from Item 92 of the Schedule to the Act (which is a list of psychotropic substances) that "Buprenorphine" is a psychotropic substance. We may point out that the aforesaid Item 92 had been added to the list of psychotropic substances by the notification dated 26.10.1992. The offence in this case is alleged to have been committed on 25.06.1994. We have, therefore, no doubt that the substance recovered from the appellant is a psychotropic substance.

8. If it was "psychotropic substance" possession of the same would amount to an offence only if it was in contravention of Section 8 of the Act. That Section shows that no person shall possess any psychotropic substance except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the Rules or orders made thereunder.

19. The Hon''ble Supreme Court while referring to Section 21 of the NDPS Act, which is analogous in the context of the substantive provision as it stands today, in the case of Sajan Abraham Vs. State of Kerala, in para-7 has held as follows:

7. It is thus apparent that what is made punishable u/s 21 is possession, sale, purchase, etc. of the drugs and preparations mentioned therein in contravention of any provision of the Act or any rule or order made or condition of license granted thereunder. Obviously, therefore, if any rule permits a person to possess any psychotropic substance within the limits specified under the rule and subject to such conditions as the rule may prescribe, such a person cannot be held guilty of the offence u/s 21 of the Act if it is shown that his possession is not in contravention of such rule.

20. Similarly, the Hon''ble Supreme Court in Ouseph alias Thankachan v. State of Kerala : (2004) 4 SCC 446 in para-5 has held as follows:

5. Though the investigating agency thought that the article recovered from the appellant was a narcotic substance, it is in fact a psychotropic substance. This is clearly discernible from Item 92 of the Schedule of the NDPS Act. If it is a psychotropic substance, possession of it would become an offence only it was in contravention of the Rules prescribed. Under Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 any person may possess a reasonable quantity of psychotropic substance "as may be necessary for their genuine scientific requirements or genuine medical requirements". This is subject to the limitation contained in the proviso that he is in possession of the said substance for his personal medical use, the quantity thereof shall not exceed one hundred dosage units at a time.

21. In view of the above observations of the Hon''ble Supreme Court since the petitioners have violated the terms of license issued to them under the D&C Act, 1940 and the Rules framed thereunder, the provisions contained under the NDPS Act would apply and if an offence is committed by them in violation of the provisions of the NDPS Act and the Rules framed thereunder, the petitioners are liable to be prosecuted for the said offences.

22. It cannot be disputed that if the protection as provided under Rules 65 to 67 of the NDPS Rules to the license holders under the D&C Act, 1940 and the Rules framed thereunder goes, the provisions of the NDPS Act, 1985 and the Rules would take over in toto and for any act done in violation of the provisions of the NDPS Act, 1985 and the Rules framed thereunder, the offence would be made out, which in the present case is clearly made out as the petitioners were found in possession of 19270, 2ml ampoules of Bup-Norphine batch No. 1451 manufactured by M/s Global Labs, Mohali, Punjab, as the petitioners failed to produce any bill/invoice in support of the purchase of the above-said injections. In view of the above, the judgments, which have been relied upon by the counsel for the petitioners, would not be of any help and the contentions raised by the petitioners rejected.

23. As per allegations in the charge-sheet, a joint raid was conducted which consisted of CBI officials along with the officers of the Drug Department of Punjab at the business premises of M/s Suraj Medical Agencies located at Court

Road, Moga, Punjab on 01.09.2006. In the said raid, 19270 ampoules/injections of Bupre-Norphine in the brand name of Bupnorphine of batch No. 1451 were recovered. On demand, petitioner No. 2 Roshan Lal, who is the competent person/Incharge/Agent of M/s Suraj Medical Agencies, failed to produce any bill/ invoice in support of the purchase of the above-said injections, which had been manufactured by M/s Global Laboratories, Mohali, Punjab and investigation confirmed that M/s Global Laboratories had manufactured a minimum of 75,000 ampoules of Bupre-Norphine injections of batch No. 1451. Out of these, 65,000 injections of Buprenorphine were claimed by the M/s Global Laboratories, Mohali, Punjab to be sold to M/s E.T.C. Medicines, Malda, West Bengal. On cross checking of the same, the said claim was found to be false and it was revealed that as a matter of fact, M/s E.T.C. Medicines, Malda had purchased only 30,000 Bupre-Norphine injections of the above-mentioned batch from M/s Global Laboratories, Mohali, Punjab. Investigations have established that illegal marketing of buprenorphine injections was being done by M/s Global Laboratories, Mohali, Punjab, which is evident from its false claim about the sale of 35000 buprenorphine injections in the brand name of Bupnorphin of batch No. 1451 to M/s E.T.C. Medicines, Malda, West Bangal. The record of M/s Global Laboratories, Mohali, Punjab does not find mention about any sale of buprenorphine injections to M/s Suraj Medical Agencies, Moga, Punjab. The charge-sheet has rightly been filed against the petitioners.

24. As regards the contention of the counsel for the petitioners that the charge-sheet presented before the Special Judge, Moga, could not have been presented in the light of the charge-sheet having already been presented in the Court of Special Judge, NDPS Cases, Muzaffarnagar, suffice it to say that the said plea had already been taken by the co-accused before the Hon''ble Supreme Court in the Transfer Petition (Crl.) No. 245 of 2009 titled as Rajinder Kapoor v. Central Bureau of Investigation, which stands dismissed by the Hon''ble Supreme Court vide order dated 13.11.2009, the same cannot thus be made a ground to quash the FIR registered against the petitioners specially when the offence under the NDPS Act is made out in the FIR registered against them as also in the charge-sheet presented against them.

25. Finding no merit in the present petition, the same stands dismissed.

