
(2003) 12 BOM CK 0010

In the Bombay High Court

Case No : Criminal Appeal No's. 1275, 1334 and 1335 of 2002

Rajesh Popatlal Thakkar

APPELLANT

Vs

Intelligence Officer, Narcotics Control Bureau and Another

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2(23), 22, 29, 8

Citation : (2004) 3 MhLj 367 : (2004) 3 MhLj 366

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : A.P. Mundargi and Anil Lalla, instructed by Lalla and Lalla for Cri. Appeal No. 1275 of 2002 and S.B. Keswani, Ayaz Khan and Yogesh Israni, in Cri. Appeal Nos. 1334 and 1335 of 2002, K.V. Saste, app, for the Appellant; Nalavade, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—The appellants are challenging the correctness, propriety and legality of the judgment and order of conviction and sentence passed by Special Judge for Narcotic Drugs and Psychotropic Substances Act, Greater Mumbai, in Special Case No. 296 of 1999, wherein the learned Judge had convicted the original accused Mohamed Shaffi @ Mamoo @ Shafi Mamoo, the appellant-original accused No. 2 Prakash Vasudev Raghuvanshi, appellant original accused No. 3 Smt. Dimple Prakash Raghuvanshi, appellant original accused No. 4 Rajesh Popatlal Thakkar @ Rajubhai @ Rajesh Kotak for offence u/s 8(c) punishable under sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as N.D.P.S. Act for convenience) and sentenced each to suffer rigorous imprisonment for 10 years, for each count and to pay fine of Rs. 1 lac for each count, in default to undergo further rigorous imprisonment for 2 months for each count.

2. The prosecution case, in brief, is that on 16-7-1999, the concerned officers of

N.C.B. got the intelligence that one Mohammed Shaffi was going to take delivery of large quantity of Mandrax tablets kept in two suitcases from one Maya residing at Tarachand building, D. N. Singh Road, Mazgaon, Mumbai. Hence, the said information was dispatched by P.W. Sanjay Gokhale to his superior and thereafter the panchas were called and information was disclosed to them and a trap was arranged. At about 8.30 p.m., the raiding party was near the said flat and at that time, they noticed that a taxi bearing No. MMO-633 came near said Tarachand building and stopped. A person got down from it and asked taxi driver to wait and went to upper stairs of the said building. Thereafter same person, along with one more person came down carrying two suitcases. As they were about to keep those two suit cases in the dicky of taxi, the members of raiding party caught them. On interrogation, they disclosed that those two suit cases contained mandrax tablets, which they procured from said Maya staying in room No. 30 of Tarachand building. The said suitcases were opened in presence of panch witnesses and the members of raiding party learnt that those two suitcases were containing Mandrax tablets kept in polythene bags. Both the persons, together with suit cases were taken to room No. 30 and on bell being pressed, a woman named Dimple Prakash Raghuvanshi, wife of Prakash Raghuvanshi opened the door. On search of the said premises, Rs. 1,75,000/-were found in Indian currency and some documents were noticed by the members of raiding party. Those Mandrax tablets and those documents were seized under panchanama.

3. Those persons were taken to the office of N.C.B. Their statements were recorded in view of provisions of Section 67 of N.D.P.S. Act. Investigation proceeded and the charge sheet was submitted in the trial Court against all the appellants, as well as against said Mohammed Shaffi @ Mamoo. All of them faced the trial and all of them have been convicted as mentioned above.

4. Before the judgment was pronounced original accused Mohammed Shaffi @ Mamoo expired.

5. The Advocates appearing for the appellants seriously challenged the credibility of the prosecution witnesses. They submitted that the investigating agency did not arrest said Maya and one Haji Nisar, who were the real culprits. They submitted that when it is the case of the prosecution that Maya was to give the delivery of those two suitcases containing Mandrax tablets, which Haji Nisar was to purchase, how those two persons were not made accused. They submitted that the role of Mohammed Shaffi, Prakash Raghuvanshi, Dimple Raghuvanshi and Rajesh Thakker was not at all disclosing the commission of the offences punishable under provisions of N.D.P.S. Act.

6. They submitted that when it is the prosecution case, that the members of raiding party caught both Prakash Raghuvanshi and Mohammed Shaffi @ Mamoo, while putting those two suitcases in the dicky, those two suitcases were on their person and that being so, it was the duty of the members of raiding party to inform both of them, that in view of provisions of Section 50 of N.D.P.S. Act, they were entitled to be searched before a Magistrate or Gazetted Officer. According to

the advocates appearing for the appellants, the members of raiding party did not do that and therefore, the evidence which has been adduced by the prosecution cannot be utilised for basing conviction against the appellants. They submitted that the learned trial Judge has committed an error in using the said evidence for the purposes of basing conviction against the appellants and therefore, that being illegal, the said judgment and order be set aside and appellants be acquitted.

7. Shri Keswani submitted that Prakash Raghuvanshi and Dimple Raghuvanshi had gone to meet the sister of Maya, who was mother of Dimple and mother-in-law of Prakash Raghuvanshi and as they were present in room No. 30 for such a visit, the members of raiding party caught both of them and falsely implicated in this case. Shri Keshwani submitted that the alleged statements recorded in view of provisions of Section 67 of N.D.P.S. Act cannot be used against both the appellants for basing conviction, because, those statements by themselves show that the evidence was obtained by exercising undue influence and coercion on those two appellants. Shri Keshwani submitted that excluding those statements, the prosecution does not have any evidence for supporting the conviction and therefore, on this count also conviction and sentence be set aside and appellants be acquitted.

8. Shri Mundargi, appearing for Rajesh Thakkar submitted that the role which has been attributed to Rajesh Thakkar was that he introduced Mohammed Shaft @ Mamoo to Maya and thereafter, he was present when Rs. 5,25,000/-were given to Maya by Mamoo. He submitted that there is nothing on record to show that the appellant Rajesh Thakkar was knowing as to for what purpose the said amount has been given to Maya by Mohammed Shaffi @ Mamoo. Shri Mundargi submitted that the appellant Rajesh Thakkar happened to be the brother of the practicing lawyer; he happens to be helping his brother in the said practice and therefore, very much likely to come in contact with criminals, who are supposed to visit the office of Rajesh Thakkar and his brother for Court work. In that context, as Maya was having her case entrusted to brother of Rajesh Thakkar, Rajesh Thakkar was in acquaintance with Maya. So also Mohammed Shaffi was having his case entrusted with the brother of Rajesh Thakkar and therefore, he came to be acquainted with Rajesh Thakkar. As Rajesh Thakkar was acquainted both Mohammed Shaffi @ Mamoo and Maya, he introduced both of them with each other. That by itself does not show any complicity in the crime or in the conspiracy in committing crime by each of the accused facing the trial. Shri Mundargi further submitted that in that context Rajesh Thakkar was present when Mamoo gave that amount to Maya. Shri Mundargi submitted that it is a matter of experience, that brothers and near relatives of advocate are generally acquainted with the clients, who come to their office or residence for Court work. Some of such relatives get themselves well acquainted with such criminal side litigants. On some occasions they mix with "them, they sit with them, they chat with them and on some occasions eat some eatables and drink tea also. Shri Mundargi submitted that such association does not mean that they are hands in

gloves with said criminal side litigants.

9. Shri Keswani and Shri Mundargi submitted that in the present case the prosecution has not proved that those tablets were containing methaqualone, a narcotic drug or substance of it. They pointed out the evidence of Assistant Chemical Examiner, who stated in the cross-examination that before analysis, he did not even consider the formula of Methaqualone. They submitted that the cross-examination of Assistant Chemical Analyser, Anand Kumar Saxena, shows that he analysed the sample sent to him without informing himself about the necessary ingredients of Methaqualone powder, which happens to be a prohibited narcotic drug in view of provisions of N.D.P.S. Act. It is their submission that the prosecution failed in this case to establish that it was methaqualone powder tablets, which are prohibited by relevant provisions of N.D.P.S. Act and therefore, no offence can be spelled out against the appellants. They prayed that these appeals be allowed and the appellants be acquitted.

10. Shri Nalavade and Shri Saste appearing for the prosecution, vehemently opposed the submissions advanced by S/Shri Keswani, Mundargi in favour of the appellants. They submitted that it is not necessary that the Assistant Chemical Analyser should know the formula of Methaqualone powder at the time of chemically analysing the samples sent to him. They submitted that if the members of raiding party by utilizing the test kit carried by them could come to the conclusion that the substance seized in the search effected by them happens to be a narcotic drug, the prosecution is exonerated from the burden of proving that it is a narcotic drug.

11. Both Shri Nalavade and Shri Saste submitted that in this case, there was no need of informing the accused Mohamed Shaffi @ Mamoo, appellant Prakash Raghuvanshi that they were having a right to be searched before a Magistrate or a Gazetted Officer, as envisaged by Section 50 of N.D.P.S. Act, because those suit cases cannot be treated to be on the person of the appellants.

12. Both Shri Nalavade and Shri Saste submitted that the investigating agency has done its best for the purposes of procuring the presence of Maya and Haji Nisar but in spite of that they could not be found and therefore, the criticism levelled by the defence be dismissed. Both of them submitted that the evidence adduced by the prosecution witnesses is well corroborated with each other and therefore, prosecution has proved its case beyond reasonable doubt. They submitted that the learned trial Judge has appreciated the evidence on record in proper legal way and therefore, the order of conviction and sentence is well justified and in view of that, the appeals be dismissed.

13. S/Shri Keswani, Mundargi placed reliance on the judgment of Mohd. Husain Baba Miyan Ramzan v. State of Maharashtra and Hiralal Ramlal Sharma v. State of Maharashtra, reported in 2(1994) CCR 1223. Wherein the Division Bench of Bombay High Court held that:

"When entire muddemal except samples deposited with head office, register

shows sample packets were also deposited at such time, the statements of S.I. showing that the samples were handed over to constable on the same day and samples were sent after three days to Chemical Analyser, such evidence would not be believed on account of no satisfactory explanation rendered by prosecution".

Both of them placed reliance on the judgment of Supreme Court in the matter of State of Punjab Vs. Baldev Singh, etc. etc., and submitted that in the present case, those two suitcases happened to be on the person of appellant Prakash Raghuvanshi and accused Mohammed Shaffi @ Mamoo. Therefore, it was necessary for the members of raiding party to inform them that they were having right to be searched before a Magistrate or Gazetted Officer. They placed reliance on the judgment of T. Hamza Vs. The State of Kerala, . In which it has been held that:

"Section 50 provides a reasonable safeguard to the accused before a search of his person is made by an officer authorised u/s 42 to make it. The provision is also intended to avoid criticism of arbitrary and high handed action against authorised officers. The legislature in its wisdom considered it necessary to provide such a statutory safeguard to lend credibility to the procedure keeping in view the severe punishment prescribed in the statute".

14. S/Shri Nalavade and Saste placed reliance on the judgment of Supreme Court in the matter of Jagdish Budhroji Purohit Vs. State of Maharashtra, . Wherein Supreme Court held that :

"When the reports of Chemical Analyser show that he had performed the qualitative test and found offending drug in sample and when the members of raiding party had carried out a kit of test and after test by that kit, they found that the substance was narcotic drug, it will have to be held that there was sufficient evidence besides the report for convicting the accused for the offence for which they were charged."

15. Both of them have also placed reliance on the judgment of Baldev Singh's case (supra) for substantiating their contention on the point of compliance of Section 50 of N.D.P.S. Act.

16. P.W. 5 Anand Kumar Saxena stated in the cross-examination that Methaqualone is synthetic product and not a natural product. Methaqualone is a single organic compound. He further stated that he does not remember the chemical formula of Methaqualone before carrying the analysis in this case. In respect of the sample of Mandrax tablets he further stated that when he dissolved the sample in distilled water, he did not find it necessary to write down colour of the said solution. He further stated that it was not necessary for him to find out as to what was settled down in the said solution after intervention of alum. He further stated that notes were recorded by him after everything was done. It is his statement in cross-examination that it is not necessary to know all the components to come to a definite conclusion, that is to say components of

the substance to be examined.

17. In his cross-examination he further stated that he had written down test memo before he conducted the test and relying on the test memo he did not consider it necessary to find out if the tablets were something else, than Methaqualone. He stated that while testing, he took small quantity of sample in test tube, added 7 drops of 88% Formicacid and 5 drops of 5% Sodium Nitrite solution and added 15-20 drops of chloroform and after some time chloroform layer become Yellowish. He stated further that formicacid was in a liquid form and Sodium Nitrite in solid form. Formicacid was available from the laboratory itself and it was colourless when he mixed Formicacid with small quantity of the sample, the solution was colourless. He made solution of 5% Sodium Nitrite in 95 Ml. water i.e. to say by dissolving of 5% of Sodium Nitrite in 95Ml. of water. That was also colourless. He further stated that when he mixed this solution in the earlier solution there was yellow colour development. He further stated that he was not knowing as to what was the effect of Formicacid on carbon. He was not knowing as to what is the effect of Sodium Nitrite on carbon.

18. This witness stated that he was not remembering the formula of Methaqualone and before analysis he did not try to find out as to what are the components of Mandrax tablets.

19. Keeping in view these answers given by Anand Kumar Saxena in the cross-examination, both Shri Keswani and Mundargi submitted that the said analysis was not correct analysis and the certificate given by the Assistant Chemical Examiner was not proving that the samples were containing Methaqualone powder, a narcotic drug prohibited by provisions of N.D.P.S. Act. Both of them pointed out the structural formula Methaqualone (Qualude) Synthesis F.A.Q. 0.7 by Rhodium 980701, by producing the information about the Methaqualone from the web site <http://www.rbodium.ws/chemistry/qualude.html>. They also produced the information in respect of Methaqualone from Merc Index. They demonstrated that there are seven categories of Methaqualone powder and out of that, possession of only one category is punishable under N.D.P.S. Act. They pointed out Schedule V in respect of Section 3(XXIII).

20. In Chapter VIII, title Schedule I (Rules 53 and 64) formula of Methaqualone has been given as 2-Methyl-3-Otoly-4(3H)-quinazolinone. Formula of 7 categories of Methaqualone has been given in Merc Index and the information obtained from the above mentioned Web site. When the prosecution has examined the Assistant Chemical Examiner as witness. For the purpose of proving its case and the certificate of Assistant Chemical Examiner and has adduced evidence in examination-in-chief, in respect of details of the examination which he performed, such witness, who happens to be expert witness is under obligation to satisfy the Court that he happens to be an expert and he performed said test qualitatively and in accordance with the accepted formula of the particular substance consistent with the information available in respect of Organic Chemistry on it. And the evidence so adduced by the

prosecution should be able to prove that by a satisfactorily chemical test the Assistant Chemical Examiner has come to his conclusion that the substance, which was sent to him for chemical analysis was narcotic drug which has been banned by the provisions of N.D.P.S. Act. It was for the prosecution and for witness to prove to the satisfaction of the Court in a reasonable way at least that he performed the test in a scientific way and he recorded notes of such analysis at the time of performing such chemical analysis. Such notes at least should show that he confirmed his finding with data already given to him, so far as drug of Methaqualone is concerned. His evidence should show that before starting said chemical analysis, he had informed himself of the chemical formula of Methaqualone, and he had informed himself about the necessary ingredients of Methaqualone powder which is banned by provisions of N.D.P.S. Act. In this case his cross-examination shows that when he started chemical analysis, he was not remembering the formula of Methaqualone. His notes also did not show that he had taken good notes of his chemical analysis and he had written down formula of Methaqualone before starting said test or during test or even after concluding that test. His evidence is slip shod and shaky and not satisfying this Court that he had really carried the said test in a scientific way. On the contrary, his evidence shows that he was shaky in knowledge and he was shaky in answering questions in cross-examination.

21. In every criminal prosecution, it is the duty of the prosecution to establish that the substance, drug, particle which has been seized in the raid is a contraband article, in context with the specific Act under which raid has been effected. It is the duty of the investigating agency to collect such material which would show that what has been seized in the raid was a prohibited drug, material, article in context with the said Special Act. It is the duty of said investigating agency and prosecution to get the evidence on record to show that after performing a scientific test the Assistant Chemical Examiner or Chemical Examiner has concluded that the said article, drug, substance was a prohibited article or substance in view of Special Act. Therefore, in the present case it was the duty of the prosecution to prove beyond reasonable doubt that what was seized was Methaqualone powder or said tablets were containing Methaqualone powder, which happens to be of that category which is a prohibited narcotic drug in view of Schedule I in context with provisions of Section 2(23) of N.D.P.S. Act and prosecution has to exonerate itself from such obligation by cogent, satisfactory and legal evidence. In this case the prosecution has failed to do so.

22. Shri Nalavade and Shri Saste placed reliance on the judgment of Supreme Court in the matter of Jagdish Budhroji Purohit v. State of Maharashtra. The prosecution cannot take advantage of this judgment and observation of the Supreme Court, because in this case the Assistant Chemical Examiner or Chemical Examiner was not examined and prosecution solely relied on the certificates of Assistant Chemical Examiner. That could have been a different case that prosecution depending on the reports of Assistant Chemical

Examiner. But in this case prosecution ventured to examine Assistant Chemical Examiner and brought forth on record the details of his Chemical examination in examination-in-chief, and when he was cross-examined, he by answering questions asked to him in cross-examination created number of mistakes and exposed himself to be an insufficient person with insufficient scientific knowledge.

23. Thus, examining the evidence of Assistant Chemical Examiner in this case and his reports and notes of his chemical examination, this Court has no hesitation in coming to the conclusion that in this case prosecution failed to prove that what was seized in the raid was Methaqualone powder and Mandrax tablets prohibited by relevant provisions of N.D.P.S. Act. The learned trial Judge unfortunately did not notice the gross error- committed by Assistant Chemical Examiner in answering the questions put to him in the cross-examination. The trial Judge did not acquaint himself with the exact nature of Methaqualone powder prohibited by the provisions of N.D.P.S. Act as indicated by Schedule in context with the provision of Section 2(23) of N.D.P.S. Act. In the matter of State of Punjab Vs. Baldev Singh, etc. etc., the Supreme Court has laid down the guidelines in paragraph No. 55 after detailed discussion of the principles of law enunciated by different judgments. In paragraph No. 55 sub-para (4) Supreme Court held that :

"That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under cloud if the Court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair."

24. Thus, in this case it will have to be seen how the investigating agency has damaged itself while investigating the crime in question. It is the prosecution case, that one Mohammed Shaffi @ Mamoo was to purchase 50 kgs. Mandrax tablets and for that he knew that Maya was selling such tablets. The investigating agency further knew that said Maya was procuring such tablets from one Haji Nisar. It is the prosecution case that Rajesh Thakkar introduced said Maya to Mamoo and Mamoo gave Maya Rs. 5,20,000/- as advance payment for purchase of said Mandrax tablets. In view of that agreement to purchase the Mandrax

tablets, Mamoo was to visit room No. 30, Tarachand building. It is the prosecution case that said Mamoo was accompanied by Prakash Raghuvanshi, who happens to be son-in-law of the sister of said Maya, Prakash and his wife Dimple had already gone to room No. 30 to meet the sister of said Maya. When Prakash came near the said room No. 30, Tarachand building, he stopped the taxi by which he came there and went upstairs and from upstairs brought two suitcases containing Mandrax tablets. It is the prosecution case, that those two suitcases containing the Mandrax tablets were procured by Maya from Haji Nisar. When Mamoo and Prakash Raghuvanshi were putting those two suitcases in the dicky, they were caught by the members of raiding party and when search was effected, it was noticed that said two suitcases contained 50 Kgs. Mandrax tablets.

25. When it is the prosecution case, a question arose which has not been answered satisfactorily by prosecution as to why said Maya has not been arrested till trial started or till trial was over. Why said Haji Nisar was not arrested till said trial started or was over. S/Shri Nalavade and Saste submitted that necessary summonses were sent for the purpose of procuring presence of Maya and Haji Nisar but they were not found. Both of them submitted that the summonses were issued to near relatives of Maya and Haji but they were not found. Both of them were unable to offer any answer to the query as to why special squad was not prepared for the purpose of getting vigilance, for the purpose of arresting Maya and why the vigilance was not put at the house of Haji Nisar for the purpose of arresting him. On record, there are some photographs of Maya and Haji Nisar singularly and with their family members. When the investigating agency was able to have photographs, why effective steps were not taken for arresting both Maya and Haji Nisar. Investigating Agency should have shown both Maya as absconding accused while submitting chargesheet in the Court but even that is also not done. At this juncture a submission which has been advanced by Shri Keswani that said Prakash, the appellant, who happens to be the son-in-law of sister Maya and said marriage was solemnised few months ago. Shri Keswani also submitted that no newly wedded son-in-law would be asked by mother-in-law to carry down stairs the suitcases at the time of his first visit and therefore, the story put forth by the prosecution that those two suitcases were carried down stairs by Prakash is not a true story, should be given due weightage. Apart from that, there cannot be any doubt that the investigation done in this case is not fair, it happens to be suspicious and there is reasonable ground to come to the conclusion that a special latitude has been given by investigating agency to Maya and Haji Nisar and both of them have not been booked. The statements recorded in view of Section 67 of N.D.P.S. Act have been retracted by the appellant. Section 67 of N.D.P.S. Act provides the authority to investigating officers to get the information to know as to how the offence has been committed and scope of that section is limited to that extent only. The investigating officer is not permitted to couch the confession of the concerned accused in his such statement. Such statements are to be read properly by

excluding the said concessionary portion embodied in the statement. That has to be done when prosecution is without any evidence on the point which prosecution wants to prove in respect of a particular accused. It is to be excluded when prosecution is not having other evidence to prove on that particular point. In this case the prosecution has not gathered material to prove as to particular role played by the appellant Dimple Raghuvanshi. In this case the prosecution solely depends on the statement of Dimple Raghuvanshi in this context. Such paltry, inculcate statements couched in tricky way cannot be accepted. The prosecution has no other evidence to prove the guilt of appellant Dimple and the experience does not permit the Court to come to the conclusion that a newly wedded son-in-law would be asked by mother-in-law or her sister to take down the suitcases containing 50 Kgs. Mandrax tablets soon after the performance of the marriage and at the first visit of such son-in-law. Therefore, this Court is not prepared to accept the prosecution case brought forth by evidence of prosecution witnesses namely Sanjay Gokhale, Ashok Thakkar, Shivaji Narale. This Court does not come to the conclusion that appellant Prakash Raghuvanshi was caught by the members of raiding party at the time of putting the said suit cases in dicky. There are reasonable ground to believe that he must have been brought from room No. 30 which his wife Dimple and he, both have visited at first time after the said marriage. Mohammed Shaffi @ Mamoo might have been in all probability the person with those suitcases kept in dicky of the said taxi.

26. There has been a controversy between the defence of the appellant and the prosecution, whether Section 50 of N.D.P.S. Act was necessary to be complied with in this case. In view of the judgment of Supreme Court in Baldev Singh's case (Supra), those suitcases were in dicky as concluded by this Court in above mentioned paragraph. They were not on the person of appellant Mamoo. Being it so, firstly it was not necessary for the members of raiding party to inform Mamoo that he was having a right to be searched before a Magistrate or the Gazetted Officer, as indicated by Section 50 of N.D.P.S. Act. There is no fault on the part of the investigating agency in this context. This Court dismisses the submission advanced by advocates appearing for the appellants on this point.

27. This Court comes to the conclusion that appellant Mamoo was found in possession of said suit cases but prosecution has failed in this case to prove that the tablets which were in those suit cases were Mandrax tablets, containing which is a prohibited drug in view of provisions of N.D.P.S. Act. Thus, even accused Mohammed Shaffi @ Mamoo deserves to be acquitted along with appellants Prakash Raghuvanshi, Dimple Raghuvanshi and Rajesh Thakkar.

28. The learned trial judge has not appreciated evidence adduced by the prosecution keeping in view the technical aspect of Methaqualone powder. The trial Court failed in noticing that the prosecution did not prove that those tablets were Methaqualone containing that category of Methaqualone which has been prohibited by relevant provisions of N.D.P.S. Act. The conclusions drawn by the trial Judge are thus, erroneous when he concluded that the appellants are guilty

of the offences mentioned above. As the said judgment and order happens to be incorrect and illegal, that has to be set aside and appellants have to be acquitted by allowing their appeals.

29. Thus, appeal stands allowed. The appellants are hereby acquitted of the charges levelled against them. There is no interference in respect of disposal of the property.

Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer/Sheristedar of this Court.