

(2005) 11 MAD CK 0009

In the Madras High Court

Case No : Criminal O.P. No. 10184 of 2005 and Criminal M.P. No's. 3653 and 3654 of 2005

S. Ramadas

APPELLANT

Vs

Intelligence Officer, Narcotics Control Bureau, South Zonal Unit

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 — Section 3
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 25A, 27, 27(1), 29

Citation : (2006) 1 CTC 657 : (2006) 1 MLJ 100

Hon'ble Judges : T.V. Masilamani, J

Bench : Single Bench

Advocate : P. Theogaraj, for the Appellant; P.N. Prakash, Special Public Prosecutor for NDPS Cases, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Masilamani, J.—The petitioner/first accused has filed this petition to quash the proceedings in C.P. No. 1 of 2003 in Spl. C.C. No. 2

of 2003 on the file of the Special Judge (III Additional Sessions Judge), Pondicherry for the offence u/s 25-A read with Sections 29 and 9A of the

N.D.P.S. Act, 1985.

2. The case of the prosecution is that on 5.6.2003, the petitioner (A-1) along with 2nd accused had to come to Navata Road Transport Office at

Pondicherry to take delivery of Ephedrine HCL I.P. and that the same is a controlled drug under the N.D.P.S. Act. Hence, there is reasonable

belief that the drug is likely to be utilised for illegal manufacturing of narcotic drugs/psychotropic substances. The said drug Ephedrine HCL I.P. is

notified as controlled substance under Government of India, Ministry of Finance Notification in S.O. No. 1296 (E) dated 28.12.1999.

3. In view of the fact that the said drug Ephedrine HCL I.P. does not find a place in the list of controlled drug under the N.D.P.S. Act, 1985 or in

the amended Act, 2001 or in any other Act, such complaint against the petitioner is illegal and therefore is liable to be quashed as far as the

petitioner is concerned. Hence, the petition.

4. Heard Mr. P. Theogarai, learned Counsel appearing for the petitioner and Mr. P.N. Prakash, learned Special Public Prosecutor appearing for

the respondent.

5. Learned counsel for the petitioner has contended at the outset in his argument that every notification or order issued under Clause (vii-a), Clause

(xi), Clause (xxiii-a) of Section 2, Section 3, Section 7A, Section 9A and Clause (a) of Section 27 shall be laid as soon as may be, after it is made

or issued, placed before each house of Parliament while it is in session and therefore since the notification under question in this petition was not

placed before both the houses of parliament before ever the same was issued, the prosecution laid as against the petitioner is liable to be quashed.

6. Per contra, leaned Special Public Prosecutor for N.D.P.S. Cases has drawn the attention of this Court that as on the date of notification (i.e)

28.12.1999, the N.D.P.S. Act, 1985 (as amended by N.D.P.S. Amendment Act, 1988) was in force and that therefore the notification issued u/s

2(vii-a) of the N.D.P.S. Act, 1985 need not be laid before the parliament u/s 77 of the N.D.P.S. Act, because there is no reference to Section

2(vii-a) in the provision u/s 77 of the Act and therefore he has submitted that the petition is liable to be dismissed.

7. It is not in controversy that the petitioner and other accused were charged for the said offences as they contravened the provision under the said

notification under S.O. 1296 (E) F.No. V/105/98-NC-II dated 28.12.1999 issued by the Government of India, Ministry of Finance. Similarly, it is

not disputed that on the date of the said notification, only the N.D.P.S. Act, 1985 (as amended by the N.D.P.S. Amendment Act, 1988) was in

force. In view of such circumstances, it is essential to extract the provision u/s 77 of the said Act hereunder to appreciate the facts and

circumstances of this case:

77. Rules and notifications to be laid before Parliament.-- Every rule made under this Act by the Central Government and every notification issued under Clause (xi) of Section 2, Section 3, and Clause (a) of and Explanation (1) to Section 27 shall be laid, as soon as may be, after it is made or issued before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

8. As has been pointed out above, the Notification under question was issued u/s 2(vii-a) of the N.D.P.S. Act, 1985 (as amended by N.D.P.S.

Amendment Act, 1988). On the contrary, the provision u/s 77 referred supra does not contemplate similar notification made u/s 2(vii-a) of the said

Act to be placed before each House of Parliament before ever it is issued and therefore this Court is of the considered view that the contention put

forth by the learned Counsel appearing for the petitioner does not deserve acceptance for the simple reason that on the date of the notification (i.e.)

28.12.1999, only the N.D.P.S. Act, 1985 (as amended by N.D.P.S. Act 1988) was in force and that the said notification issued u/s 2(vii-a) of the

N.D.P.S. Act need not be laid before the Parliament as per the provisions u/s 77 of the said Act. It is relevant to mention that Clause (vii-a) was

inserted by Act 2 of 1989, (vide) Section 3 (w.e.f. 29.5.1989) and relettered as Clause (vii-d) and inserted by Act 9 of 2001 (vide) Section 3

(w.e.f. 2.10.2001). Therefore, it is no longer open to the petitioner to urge that the said notification ought to have been placed before both the

houses of Parliament as per Section 77 of the said Act. In view of such aspects of the matter, since Ephedrine HCL I.P. is a controlled substance

as notified under the said notification, the petitioner and other accused are liable to be prosecuted under the said provisions of the N.D.P.S. Act,

1985.

9. For the reasons aforesaid, this Court finds that there is no merit in this petition and accordingly, the same is dismissed. Consequently, Crl. M.P.

Nos. 3653 and 3654 of 2005 are closed.