

(2016) 08 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 14061 (W) of 2016

Santosh Kumar Mishra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 67

Citation : (2016) 4 CalCriLR 471 : (2016) 6 WBLR 634

Hon'ble Judges : Mr. Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Mr. Somnath Bose and Mr. P. Bhattacharya, Advocates, for the Union of India; Mr. Ratnanko Banerjee, Senior Advocate, Mr. Sanjay Ginodia, Mr. M.K. Tiwari, Mr. S. Dutta Majumder and Mr. Kumarjit Banerjee, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J. - These two writ petitions are taken up together for analogous hearing as similar questions of fact and law are involved. The petitioners have assailed notices under Section 67 of the NDPS Act issued upon them in connection with a seizure effected on 2.5.2016 vide reference no. 08/NCB/Kol/2016 dated 2.5.2016 of 20,100 bottles of phensedyl cough syrup on 18.3.2016 containing codeine phosphate at Malda, West Bengal.

2. They are employees of M/s. Avantika Pharma, the clearing and forwarding agent of M/s. Abbott Healthcare Private Limited, a company which has valid licence to manufacture and deal in various Schedule "H" drugs including phensedyl cough syrup.

3. Assailing such notices, Mr. Banerjee, learned senior counsel submitted that in view of the fact that they are employees of the clearing and forwarding agent of M/s. Abbott Health care Private Limited, which has requisite licence to carry on business in the aforesaid drug, the invocation of jurisdiction of the Narcotic Control Bureau under the NDPS Act including Section 67 thereof is unwarranted

in law.

4. He submitted that there is no material on record to connect the petitioner's company with the alleged seizure of 20,000 bottles of phensedyl cough syrup.

5. He further submitted that similar notices were issued upon the Directors of the Company, which yielded no result as would be evident from the submission of Narcotic Control Bureau recorded in judgment and order dated 14.07.2016 passed in W.P. No. 10109 (W) of 2016 and W.P. No. 10110 (W) of 2016. He, accordingly, prayed for quashing of the impugned notices.

6. On the other hand, learned Senior Counsel appearing for the Narcotic Control Bureau submitted that the notices under Section 67 of the NDPS Act are non-adversarial in nature and have been issued only to collect information and/or to verify the information already collected in course of enquiry relating to such seizure.

7. He further submitted that although a licensee under the Drugs and Cosmetics Act is entitled to deal in Schedule "H" drugs for therapeutic use, but in view of the fact that a large consignment of phensedyl cough syrup manufactured by the aforesaid company was found in transit without valid licence an enquiry was initiated under the N.D.P.S. Act. Such enquiry necessitated verification of facts and hence, not only the Director of the company but also its employees i.e. the present petitioners herein, have been summoned under Section 67 of the NDPS Act.

8. I have considered the submissions of the respective parties. In the earlier course of litigation initiated at the behest of the Director of the Company, namely Mr. Pankaj Shukla, this Court had held that there is ample jurisdiction vested in the authorities under the NDPS Act to embark on an enquiry with regard to the possession, transshipment or dealing in schedule "H" drug having concentration of Codeine Phosphate, below 100 mg., provided such drug is seized under circumstances which gave rise to reasonable suspicion that it was being dealt with for non-therapeutic purpose. It appears that the seizure of the drug in the instant case was made in the course of transportation without valid licence giving rise to the reasonable belief that such drug was being transported for non-therapeutic purposes. Although the petitioners have denied any connection with the transportation of aforesaid consignment of drugs, it cannot be denied that such drug carried the label of its principal, namely, M/S Abbott Health-care Pvt. Ltd. and the petitioners' company is the CNF agent of the said company. Hence, the Director of the petitioners' company were summoned and interrogated during the enquiry. In the aforesaid factual backdrop, notices were issued upon the petitioners who are the employees of the company in order to verify the statements made by its Director. Such exercise on the part of NCB has been strenuously argued as malafide and vexatious on the premise that the interrogation of the Director of the Company had not yielded any incriminating material. I am of the opinion that notice to interrogate the petitioners to verify

the statement of the Director, as aforesaid, or to collect further or other material in connection with the enquiry is a prudent exercise of power in course of enquiry into alleged non-therapeutic use of schedule "H" drug and cannot be said to be unjustified or unwarranted in law.

9. In view of the aforesaid discussion, I do not wish to interfere with the impugned notices issued upon the petitioners. Petitioners are directed to respond to the said notices and cooperate with the process of enquiry. It is, however, made clear that in the course of interrogation the authorities shall not resort to any unlawful or coercive measures and the interrogation of the petitioners shall be conducted bearing in mind the principles of human dignity and basic human rights as enshrined under Article 21 of the Constitution of India.

10. With the aforesaid observations, both the writ petitions are, disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.

12. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.