
(2018) 08 UK CK 0071

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 160 of 2017, 78 of 2018

Shveta Mashiwal & Others

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 29, 32B ,71
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 77

Citation : (2018) 08 UK CK 0071

Hon'ble Judges : Rajiv Sharma, J;Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : Dushyant Mainali, Paresh Tripathi, Lalit Sharma, Shobhit Saharia, Ankur Sharma, Ramji Srivastava, Devesh Upreti, Paresh Tripathi, Sanjay Bhatt

Final Decision : Disposed Of

Judgement

RAJIV SHARMA, J. (ORAL)

MANOJ KUMAR TIWARI, J

1. Since the common questions of law and facts are involved in both these petitions, therefore, same are being taken up together and are being

adjudicated by this common judgment. In order to maintain clarity, the facts of WPIL No. 160 of 2017 are taken into consideration.

2. A question of grave public importance has been raised in these petitions. According to the averments made in WPIL No. 160 of 2017, the

menace of drug peddling, drug addiction and other drugs trafficking issues have increased manifold in major cities or towns throughout the State of

Uttarakhand. The menace has also spread to the schools, colleges and Universities. This issue has been highlighted in the daily edition of the "The

Times of India", Dehradun dated 20.10.2016 under the caption "Drug abuse

among youngsters an acute problem in Uttarakhand. The same issue was highlighted in leading news website hillpost.in titled as [Dehradun is Drug Haven of Uttarakhand](http://hillpost.in) dated 12.02.2012 as well as in [Haldwani Live.Com](http://Haldwani.Live.Com) titled as [Growing Drug Abuse Causing Problem in Uttarakhand](http://Haldwani.Live.Com) dated 02.06.2017. In Writ Petition No.78 of 2018, petitioner has prayed for the strict enforcement of Section 71 of the NDPS Act.

3. The petitioners have sought direction to the respondents to take immediate effective necessary steps to control, prevent and solve the problem of rising drug addiction, drug trafficking and drug peddling in the State of Uttarakhand. The petitioner had also sought a direction to the State Government to make younger generation aware of ill-effects of consumption of drugs.

4. The respondents have filed their counter affidavits. They have also shown their concern and assured the Court that stern action shall be taken to stop the spread of drug addiction, drug trafficking and drug peddling.

5. The petitioners have brought to the notice of the Court towards the National Policy on Narcotic Drugs and Psychotropic Substances. The attention this Court has also been drawn towards Paragraph nos. 52, 54, 55, 56 and 64, which read as under:-

52. Peddlers sell drugs to addicts and often carry a small quantity of drugs at a time. Many of them are also addicts themselves and peddle drugs

to earn for meeting their own requirement of drugs. Peddlers are the final link in the chain from manufacturer to addicts and hence an effective

strategy is required to handle them. They are large in number and spread throughout the country. Specialised enforcement agencies often do not have

the manpower and resources to handle peddlers and hence it is left to the local police to handle them. Local police have several competing demands

on their time and dealing with peddlers is often not one of those demands and there is no pressure from the public to deal with them. Some policemen

also do not find it convenient to arrest a peddler who is also an addict as he cannot be supplied the drugs which he needs a few hours after his arrest

and the policemen are not trained to handle addicts.

54. Adolescents are adventurous, self confident and often do new things to show that they can. By and large, this is the age at which most addicts get

initiated into drugs. Section 32B of the NDPS Act lists the fact that the offence is committed in an educational institution or social

service facility or in the immediate vicinity of such institution or facility or in other place to which school children and students resort for educational, sports and social activities as one of the aggravating factors which may be considered by the Court for imposing higher than the minimum penalty prescribed for the offence.

55. In order to tackle the problem of sale of drugs to school and college children: a) Local police shall pay special attention to areas surrounding

schools and colleges in their efforts to tackle drug peddlers. b) Schools and colleges will be encouraged to look out for peddlers in their vicinity and

report them to police. c) Schools and colleges will be encouraged to conduct surveys (possibly anonymous) to assess the levels of drug addiction

among their students, and if addicted students can be identified, to talk to their parents or wards to find medical help to cure their addiction. d) The

Central and State Education Authorities will be encouraged to include a mandatory and comprehensive chapter on drug abuse and illicit trafficking and

its socio-economic cost to self, society and the country in the syllabus for 10+1 and 10+2 students. e) Schools and colleges will be encouraged to

constitute Anti-Drug Club to promote a drug free life among its members and also in the institution.

56. Prisons are one of the most tightly secured premises. However, traffickers manage to smuggle drugs into them, and usually, addiction levels

among prison populations are much higher than among the general public. India is no exception. Drug addiction breeds crime and criminals come back

to prisons and expand the market for drugs within the prisons. If this vicious cycle has to be broken, sale of drugs within prison settings has to be

tackled effectively. In order to deal with this problem: a) Prison staff will be sensitised and trained in detecting and apprehending drugs; b) Wherever

necessary, prisons will be equipped with sniffer dogs to check the visitors and packages for drugs; c) All addicts within the prison shall be registered

and compulsorily sent for drug de-addiction. d) Every new entrant into the prison will be tested for addiction and will be de-addicted if he is found to

be addicted.

64. Drug abuse is a result of two factors- the availability of drugs and the psycho-social conditions which result in their abuse. Hence, equal emphasis

will be placed on supply and demand reduction. Demand reduction also has two

components- treating the drug addicts and educating and enabling the society to prevent addiction and to rehabilitate addicts after they have been treated. Thus, drug abuse is a psycho-socio medical problem, which needs both medical intervention and community based interventions. Hence, the Govt. of India has a three-pronged strategy for demand reduction consisting of: i. Building awareness and educating people about ill effects of drug abuse. ii. Dealing with the addicts through programme of motivational counselling, treatment, follow-up and social-reintegration of recovered addicts. iii. To impart drug abuse prevention/rehabilitation training to volunteers with a view to build up an educated cadre of service providers. Of the above, treatment is the component which directly targets drug addiction. India has a two-pronged strategy towards it- (a) running deaddiction centres in Government hospitals; and (b) supporting NGOs involved in this endeavour. The Ministry of Health and Family Welfare of the Government of India runs over 100 drug-de-addiction centres in various Government hospitals across the country. The Ministry of Social Justice & Empowerment has been implementing a Scheme for Prohibition and Drug Abuse Prevention since the year 1985-86. At present, under this Scheme, the GOI supports 361 Non-Governmental Organisations (NGOs) running; 376 Deaddiction-cum-Rehabilitation Centres, De-addiction Camps, and 68 Counselling and Awareness Centres. GOI bears the major portion of the cost of services provided at these Centres. Government shall ensure that there is easy access to the services of motivational counselling, treatment, and rehabilitation provided by the Government through NGOs or its own institutions. There shall be appropriate involvement of the National Page 23 of 47 Consultative Committee on De-addiction and Rehabilitation on all issues relating to prevention, de-addiction, rehabilitation and harm reduction.

6. The Court is of the considered view that spreading of this menace has to be sternly dealt with. All the Governmental agencies should strictly enforce the provisions of the Law. Section 77 of the Juvenile Justice Act, 2015 reads as under:-

77. (1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh

rupees: Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees. (2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2: Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.â??

7. Honâ??ble Delhi High Court in the case WPCRL No. 2401 of 2017, in the case of Aasha Vs. State Government of N.C.T of Delhi and another

has dealt with this issue in depth. The relevant paragraphs are as under :-

â??4. CONTROL OVER SUPPLY CHAIN

4.1 Setting up Narcotics Squad in each district: The Commissioner of Police, Delhi has approved to constitute a Narcotics Squad in each district, which shall be supervised by an Inspector rank Officer, who in turn shall work under the supervision of ACP Operation.

Each Squad shall have manpower of two Upper (S.Insp/ASI) and eight lower subordinates (H.Ct./Ct.). Once the man-power proposal pending with

MHA is cleared, the strength of these squads will be increased appropriately.

The Narcotics Squad and the local police shall immediately undertake the following work:

a. Identification of hot spot of drugs sale: Each Squad shall identify such area in the district in which there are complaints of sale of drugs or where the drugs addicts are found operating. Based on these information, the local police shall immediately take necessary steps to bust/apprehend such peddlers who are active in drugs trafficking.

b. Identification of potential suppliers: As a further action, such potential suppliers shall also be identified by Narcotics Squad as well as local police and action as per law will be taken against them.

4.2 Action u/s 29 of NDPS Act against abettors & conspirators: Action u/s 29 of NDPS Act for taking legal action against the abettors and

conspirators, aiding the sale of drugs shall also be stepped up.

4.3 Identification of persons with previous convictions or pending cases for taking substantive as well as preventive actions: Each Police Station shall

prepare database/record of all individuals, who were previously involved in NDPS Act cases or have pending cases registered against them under

NDPS Act and requisite surveillance will be undertaken qua on them so that substantive as well as preventive actions can be taken against them.

4.4 Enhanced action under Section 77 JJ Act: Section 77 of Juvenile Justice Act prescribes punishment to offenders also for selling narcotics material

to the juveniles. Action under this section shall be stepped up.

4.5 Regular visits to vulnerable schools identified by GNCT Agency to identify the peddlers: State Project Director⁵-SSA, Department of Education,

GNCT of Delhi provides the list of vulnerable schools for monitoring and curbing availability and peddling the drugs and narcotics substances among

school going children. Local police shall take proactive and ensure Zero Tolerance on this issue. All out efforts shall be made to identify such elements

and in case any peddler is identified, immediate action against him will be taken.

4. 6 Help from Drug Dept./GNCT by getting a Nodal Officers appointed at district level: Use of Pharmaceutical drugs specially the Habit Forming

drugs (schedule H1) drugs are a real menace. Liaison with the Drug Dept. Is required to be for initiating action under the Drugs & Cosmetics and

NDPS Act against the unscrupulous elements, who are involved in sale of Pharmaceutical product without prescription which is to be used as a

narcotics substance.

4.7 Training session for police officers for capacity building and improving the investigation skills: Regular training is required to be conducted for

capacity building and improving the investigation as well as intelligence collection skills of the investigating officers with regard to detection and

investigation of NDPS Act related cases. This is likely to have a deterrent impact on supply chain. Dy. Commissioner of Police/Narcotics Branch will

hold regular training sessions in this regard.

4.8 Dy. Commissioner of Police/C.R.O. shall collate information on drug dealers to prepare a booklet which shall be circulated among all concerned

for taking preventive as well as substantive action.

6. Mr. Mehra submits that in-so-far as enhanced action under Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is

concerned, the Delhi Police shall taken action keeping in view the order passed by the Juvenile Justice Board " III on 20.03.2017, wherein the said

Board has widely interpreted the expression "intoxicating liquor" to include substances such as whitener, thinner and vulcanizing

solutions/sulochans. Mr. Mehra submits that the expression "intoxicating liquor" used in Section 77 of JJ Act needs to be interpreted widely to

include not just the traditionally understood liquors- which are consumed as alcoholic beverages, but also other liquids/fluids, which have the effect of

intoxication and which may not be beverages per se. As at present, advised, we agree with the submission of Mr. Mehra, Keeping in view the purpose

and object with which Section 77 of the JJ Act has been enacted, and considering the fact that the consumption of such like substances/intoxicating

liquors by the children is with the object of deriving the effect of intoxication, and the children are not likely to be aware of harmful effects of the

liquid/fluids that they may consume, and also the fact that the same may not actually be a beverages, we are, prima facie, of the opinion that such like

substances should be treated as "intoxicating liquor" within the meaning of Section 77 of the JJ Act.

7. Mr. Mehra stated that in terms of order passed by the Juvenile Justice Board III dated 20.03.2017, the Government of NCT of Delhi has issued a

notification dated 28th July 2017 which, inter-alia, direct that a "mandatory warning should be made on the application devise (pens or otherwise) of

correcting fluids/thinners and vulcanized solutions/sulochans regarding the effects on health on inhalation of vapour/consumption of chemicals

contained therein". The Government of NCT of Delhi, though the Chief Secretary was directed to issue appropriate instructions by way of

notification, circular or otherwise, banning the sale of correction fluids/whiteners, thinners/diluters and vulcanised solutions/sulochans to children below

the age of 18 years unless the child is accompanied by parents/guardians, or has a letter from the school authorities signifying their assent to purchase

of the same.

8. The Hon'ble Delhi High Court has considered the order of the Juvenile Justice Board-III dated 20.03.2017 wherein the Board has widely

interpreted the expression "intoxicating liquor" to include substances such as whitener, thinner and vulcanizing solutions/sulochans. Their lordships

have held that whitener, thinner etc. are to be treated as "intoxicating liquor" falling within the ambit of Section 77 of the Juvenile Justice Act. The

Honorable Delhi High Court has also issued certain directions to the Delhi Police to have a control over the supply chain.

9. According to National Policy on Narcotic Drugs and Psychotropic Substances, the drug addiction is increasingly becoming an area of concern as

traditional moorings, effective social taboos, emphasis on self-restraint and pervasive control and discipline of the joint family and community are

eroding with industrialization and urbanization. Both traditional and semi-synthetic and synthetic drugs are abused. Intravenous drug use and

HIV/AIDS driven by such use have added a new dimension to the problem, especially in the North-eastern states of the country. The Policy has also

addressed the issue of sale of drugs to schools children. It is highlighted in the policy that Local police shall pay special attention to areas surrounding

schools and colleges in their efforts to tackle drug peddlers. Schools and colleges shall be encouraged to look out for peddlers in their vicinity and

report them to police. Schools and Colleges shall be encouraged to conduct surveys. The issue of street peddlers has also been discussed in paragraph

no. 52 quoted hereinabove. According to this paragraph, the peddlers sell drugs to addicts and often carry a small quantity of drugs at a time. Many of

them are also addicts themselves and peddle drugs to earn for meeting their own requirement of drugs. Peddlers are the final link in the chain from

manufacturer to addicts and hence an effective strategy is required to handle them.

10. The issue of smuggling of drugs in prisons has also been discussed in the Policy. Prison staff is required to be sensitized and trained in detecting

and apprehending drugs. Prisons shall be equipped with sniffer dogs to check the visitors and packages for drugs. All addicts within the prison are to

be registered and compulsorily sent for drug de-addiction etc.

11. Accordingly, these writ petitions are disposed of by issuing the following mandatory directions including on the analogy of the directions issued by

Honorable Delhi High Court in the case WPCRL No. 2401 of 2017, in the case of Aasha Vs. State Government of N.C.T of Delhi and another: -

1. The Director General of Police, State of Uttarakhand is directed to constitute Narcotics Squad in each district which shall be supervised by an

inspector rank officer who in turn shall work under the supervision of Senior Superintendent of Police/ Superintendent of Police of the district. Each

Squad shall have manpower of two Inspectors, Assistant Sub Inspector and eight lower subordinates including Head Constable and Constables, within

a period of four weeks from today.

2. The Narcotics Squad after its constitution shall immediately undertake the following task:-

a. Each Squad shall identify such area in the district in which there are complaints of sale of drugs or where the drugs addicts are found operating

based on these information, the local police shall immediately take necessary steps to bust/apprehend such peddlers who are active in drugs

trafficking.

b. As a further action, such potential suppliers shall also be identified by Narcotics Squad as well as local police and action as per law should be taken

against them.

c. The Narcotic squad shall take action against the abettors and conspirators, aiding the sale of drugs as per Section 29 of the NDPS Act.

d. Each Police station throughout State of Uttarakhand shall prepare database/ record of all individuals, who were previously involved in NDPS Act

cases or have pending cases registered against them under NDPS Act and requisite surveillance will be undertaken qua on them so that substantive as

well as preventive actions can be taken against them.

e. The Director, Higher Education and Director, School Education are directed to provide the list of vulnerable Government schools, Government

aided Schools, Public Schools and Minority Schools for monitoring and curbing availability and peddling the drugs and narcotics substances among

school going children. Local Police shall take proactive and ensure Zero Tolerance on this issue. All out efforts shall be made to indentify such

elements and in case any peddler is identified, immediate action shall be taken against him.

f. The Narcotic squad shall take action against unscrupulous elements who are involved in sale of Pharmaceutical product without prescription which

is to be used as a narcotics substance.

g. There shall be regular training for capacity building and improving the investigating as well as intelligence collection skills of the investigating officer

with regard to detection and investigation of NDPS Act related cases.

h. The emphasis shall also be on the public school. The Director Higher Education and Director School Education shall also visit the public schools.

The free access shall be given to the Management to the School to the high ranking officers.

3. All the fluids/thinners and vulcanized solutions/sulochans are declared as â?? intoxicating liquorâ? and their sale is banned throughout the State of

Uttarakhand.

4. The State Government is directed to increase public awareness in the society. The Police shall be sensitized qua street peddlers. The Police shall be

trained to deal with peddlers.

5. State Government is directed to develop special, mobile, anti-peddling squads of police with jurisdiction of all over the cities and adjoining areas.

6. The State Government through the Secretary, Education is directed to include a mandatory and comprehensive chapter on drug abuse and illicit

trafficking and its socio-economic cost to self, society and the country in the syllabus for 10+1 and 10+2 students.

7. The local police is directed to pay special attention to areas surrounding schools including Government schools, Government aided Schools, Public

Schools and Minority Schools, colleges, Universities and coaching Centres in their efforts to tackle drug peddlers.

8. The School Managements, Principals and Teachers shall be encouraged sensitized to look out for peddlers in their vicinity and report them to police

immediately.

9. All the schools throughout of State Government including Government, Government aided, minority institutions, public schools, Universities, colleges,

Polytechnic colleges and Coaching Centres are directed to constitute a ant-drug clubs to promote a drug free life among its members and also in the

institution.

10. The State Government is also directed to sensitize the Prison staff in detecting and apprehending drugs in prisons.

11. The Prisons shall be equipped with sniffer dogs to check the visitors and packages for drugs in the entry and exiting points. All the addicts within

the prison including open jail shall be registered and compulsorily sent for drug de-addiction.

12. Every prisoner entering in the prison shall be tested for addiction and shall be de-addicted if he is found to be addicted.

13. All the prisoners who are arrested in crimes before their production in a court by an arresting agency shall be examined by the doctor and Doctor shall record their history or symptoms, if any of drug abuse. Wherever an arrested person shows signs of addiction, the police should take him to a doctor or a hospital to determine, if he is an addict, and if so, take measures to treat him.

14. The State Government through department of Public Communication and Publicity is directed to launch awareness programmes to educate the masses of ill effects of drug abuse.

15. There should be coordination amongst the school authorities, police authorities and hospitals.

16. The respondents are directed to strictly enforce Section 71 of the NDPS Act.

17. The Secretary, Health, Govt. of Uttarakhand shall be the Nodal Officer to implement these directions.

We place on record our appreciation of highlighting this sensitive and delicate issue by the petitioner and also for the assistance rendered by the learned Advocates appearing on behalf of the parties.