



2025:CGHC:2738-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 260 of 2021**

Ambika Vishwakarma S/o Shivprasad Vishwakarma aged about 31 years resident of Chainpur, Police Station Lakhanpur, District Surguja Chhattisgarh.

--- Appellant**versus**

State of Chhattisgarh, through the Station House Officer, Police Station Ambikapur, District Surguja Chhattisgarh.

--- Respondent**CRA No. 349 of 2021**

Narayan Das, S/o Late Shri Ramdas, aged about 43 years R/o.- Kewra, Police Station - Lakhanpur, District - Surguja Chhattisgarh.

--- Appellant**Versus**

State of Chhattisgarh, through Police Station Kotwali, Ambikapur, District - Surguja Chhattisgarh.

--- Respondent

For Appellant	:	Smt. Anju Ahuja and Mr. Yashesh Ahuja,
in CRA 260/2021		Advocates
For Appellant	:	Mr. Surfaraj Khar and Mr. Rishi Sahu,
in CRA 349/2021		Advocates
For respondent/State	:	Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board



Per Ramesh Sinha, C.J.

16/01/2025

1. Since the aforesaid two criminal appeals arise out of same judgment of conviction and order of sentence, they were clubbed & heard together and are being disposed of by this common judgment.
2. Appellant – Ambika Vishwakarma has preferred Criminal Appeal No.260/2021 and Appellant – Narayan Das has preferred Criminal Appeal No. 349/2021 under Section 374(2) of the CrPC questioning the impugned judgment of conviction and order of sentence dated 21.01.2021 passed by the learned Special Judge (NDPS Act), Surguja, Ambikapur, District – Surguja in Special Criminal (NDPS) Case No.04/2019, by which they have been convicted for offence under Section 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act') and sentenced them to undergo rigorous imprisonment for 12 years and fine of Rs.1,10,000/- (each), in default of payment of fine to further undergo rigorous imprisonment for 3 years.
3. The brief case of the prosecution is that on 20.09.2018, the Investigating Officer Amit Gupta was posted as Sub-Inspector at Ambikapur Police Station. On 20.09.2018 at 19:10, Sub-Inspector Amit Gupta received information from an informer that two persons, Ambika Vishwakarma and Narayan Das, are standing



on the side of the main road of Parsa with illegal narcotics syrup in a bag and are waiting for a small vehicle to come from Ambikapur. On the said information, notice was served to the witnesses through Constable No.464 Abhay Choubey and witness Manish Upadhyay, S/o Shyamdhara Upadhyay, age 35 years and Gurucharan Singh alias Guddu S/o late Rajendra Singh, age 38 years, both residents of Mayapur Ambikapur were summoned and informed about the informer information and informer information panchnama Ex. P-2 was prepared in front of the witnesses and a copy of the information was sent to the City Police Superintendent of Police, Ambikapur. Due to the City Superintendent of Police being out of the office on tour and due to time taken in obtaining search warrant, there was full possibility of the goods being destroyed, hence for verification of the information without obtaining a search warrant, information about departure was sent to the City Superintendent of Police Ambikapur as per Ex.P-4. Thereafter, along with constable 450 Sanjiv Choubey, constable 500 Pravind Singh, constable 464 Abhay Choubey and the above mentioned witnesses, in Government vehicle No. CG 03/6430 with necessary documents and kit, left for Parsa. Reaching the place mentioned by the informant in village Parsa, the area was cordoned off and as per the description given by the informer, both the persons were caught in front of Parsa Middle School and interrogated, who told their names as Ambika Vishwakarma, son of Shiv Prasad



Vishwakarma, resident of Chainpur, police station Lakhanpur and Narayan Das, son of late Ramdas, resident of village Kevra, police station Lakhanpur. Both the suspects were informed about the informer's information and were given notice Ex.P-6 under Section-50 NDPS Act, on which the suspects gave acceptance for their respective search as per Ex.P-7. Thereafter, the accused were made to search the witnesses, accompanying staff, and their own vehicle one by one. When no suspicious or objectionable item was found with them, then search panchnama Ex.P-4 for witnesses was prepared. Search panchnama Ex.P-9 for police staff and search panchnama Ex.P-10 for Investigating Officer himself was prepared. Thereafter, on search of suspect Ambika Vishwkarma, a cement colour trolley bag with Flyte King company's monochrome was found in his possession, which was opened and searched. R.C. KUFF COUGH SYRUP total 143 pieces, each containing 100 ml was found in it and a backpack in possession of second suspect Narayan Das which was blackish light sky blue in colour and of the company TYCOON was opened and searched which contained CODECTUS COUGH SYRUP 70 pieces, each containing 100 ml and ELDER QREX COUGH SYRUP 23 pieces, each of 100 ml in vials with labels containing a substance called Codeine Phosphate which was a narcotic drug, due to which search panchnama Ex.P-11 of the suspects was prepared. The bags recovered from the possession of the accused and a total of 236 psychotropic substance syrups



were recovered and recovery panchnama Ex.P.-12 was prepared. After reading the label on the bottles of syrup recovered from the possession of the accused, it was found that a substance called Codeine Phosphate was mixed in it. Then Narcotic Substance Identification Panchnama Ex.P-13 was prepared. Notice Ex.P-14 and 15 were issued to accused Ambika Vishvakarma and Narayan Das respectively to produce valid documents regarding possession of narcotic cough syrup. Then the accused wrote in notice Ex.P-14 and 15 that they did not have any documents with them. The complaint was sent to the Drug Inspector as per Ex.P-30 for giving opinion after physical examination of the cough syrup recovered from the accused, on which the Drug Inspector gave his opinion as per Ex.P-32. 04 out of 143 bottles R.C. KUFF COUGH SYRUP, 04 out of 70 bottles CODECTUS COUGH SYRUP and 04 out of 23 bottles LDER QREX COUGH SYRUP recovered from the possession of accused were separated for sampling and the remaining cough syrup was separated and sealed separately and a seal sample panchnama Ex.P.-16 was prepared. Thereafter, cough syrup and bags were seized as per Ex.P.-17 and 18. The accused were arrested and arrest papers Ex.P.-22 and 23 were prepared respectively. The scene map of the incident was prepared as per Ex.P.-26. The accused and the cough syrup seized from them were brought to Ambikapur police station, where crime number-480/2018 was registered against them. In the sequence of investigation, the



statements of witnesses Manish Upadhyay and Gurucharan Singh were recorded by the Investigating Officer, Sub-Inspector Amit Gupta, as per their statements.

4. After completion of investigation, charge-sheet was presented before the Court of Special Judge (NDPS Act), Surguja, Ambikapur (C.G.). On being reading out the charges mentioned in Clause-1 and explaining it to the accused, they denied the above crime.
5. In order to bring home the offence, the prosecution examined as many as 09 witnesses and exhibited 61 documents in support of case of the prosecution.
6. In the trial under section 313 Cr.P.C., the accused denied the facts stated by the prosecution, except for the admitted facts, and pleaded ignorance or innocence, stating that they were falsely implicated and framed. They did not examine any defense witnesses.
7. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 21.01.2021 convicted and sentenced the appellants as aforementioned. Hence, these appeals.
8. Smt. Anju Ahuja, learned counsel, appearing for appellant - **Ambika Vishwakarma in CRA No. 260 of 2021** submitted that the learned trial Court has committed an error in holding that the quantity of the Narcotic Drugs was a commercial quantity, which



in fact was the intermediate quantity. She submitted that 4 mg Codeine Phosphate is available in 100 ml bottle of the drug Codeine, therefore, according to her submissions the actual quantity contained in the bottle should have been considered, not the entire 100 ml. He further submitted that even if the entire quantity of Codeine is excluded from the total number of bottles seized, it would fall within the intermediate quantity, not the commercial quantity. In support of her contention, she relied upon the judgment passed by the Hon'ble Supreme Court in the Case of ***E.Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau*** in Appeal (Crl.) No. 1250 of 2005 dated 11 March, 2008 and the Judgment passed by the High Court of Delhi in Bail Application No.136 of 2021 in the matter of Mohd Ahsan Vs. Customs decided on 25 June, 2021.

9. Mr. Surfaraj Khan, learned counsel, appearing for appellant – **Narayan Das in CRA No. 349 of 2021** submitted that the prosecution has failed to prove this case beyond reasonable doubt, because two independent seizure witnesses namely Manish Upadhyay, PW-1 and Gurucharan Singh, PW-2 have not supported the prosecution case and turned hostile. He further submitted that the provision of Section 50 of the NDPS Act has not been complied with as appellants-accused have not been apprised of their right to get searched by the Gazetted Officer or by the Magistrate. He also submitted that in the present case, the Officer, who conducted preliminary enquiry, seized articles and



lodged report in the Police Station, has continued to investigate and filed charge sheet, therefore, the investigation is vitiated.

10. Apart from aforesaid submissions, they further submitted that no special reason has been assigned by the learned trial Court for awarding punishment/sentence of more than 10 years. He relied upon the decisions of the Supreme Court in ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh*** reported in ***(2022) 16 SCC 58*** and ***Rafiq Qureshi v. Narcotic Control Bureau, Eastern Zonal Unit*** reported in ***(2019) 6 SCC 492*** to bolster his submissions. Hence, the present appeal deserves to be allowed in full or in part.
11. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/respondent opposed the aforesaid submissions and submitted that in view of the Judgment of Hon'ble Supreme Court in the Case of ***Hira Singh and Another Vs. Union of India and Another*** reported in ***(2020) 20 SCC 272***, it is apparent that the quantity so seized would fall in the category of commercial quantity. He further submitted that though the independent witnesses namely Manish Upadhyay, PW-1 and Gurucharan Singh, PW-2 have not remained firm, but they have admitted their signatures in the seizure documents and the entire seizure of contraband has been proved from reliable coherent evidence of Investigating Officer- Amit Gupta, PW-7, who effected seizure. It is next submitted that as far as compliance of Section 50 of the NDPS Act is concerned,



Investigating Officer-Amit Gupta, PW-7 has stated in para 4 of his examination-in-chief that the accused were given notice under Section 50 of the NDPS Act regarding their right and only upon their consent, they were searched by the Police Officer. In para-19 of cross-examination, this fact has been elicited by Investigating Officer-Amit Gupta, PW-7. Mr. Pandey would support the impugned judgment and submitted that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering the material available on record and evidence adduced by the prosecution has rightly convicted and sentenced the appellants as mentioned above, in which no interference is called for.

12. We have heard the learned appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
13. In the instant case, though the independent witnesses, namely, Manish Upadhyay, PW-1 and Gurucharan Singh, PW-2 have not remained firm, but they have admitted their signatures in the seizure documents and the entire seizure of contraband has been proved from reliable coherent evidence of Investigating Officer-Amit Gupta, PW-7, who effected seizure. In this way, the prosecution story regarding the action taken at the spot in the case in hand has not been supported by the *panch* witnesses.
14. Now, it is worth considering in the case that if the fact of seizure of contraband article has not been proved by the independent



witnesses, then whether the evidence of the police witnesses presented by the prosecution can be believed. In this regard, it has been held by the Hon'ble Supreme Court in many judicial precedents that if the evidence of police witnesses is worthy of belief then the accused can be convicted on the basis of their reliable evidence also. Similarly, in the judicial precedent ***Nathusingh Vs. State of Madhya Pradesh*** reported in ***AIR 1973 SC 2783***, the Hon'ble Supreme Court has opined that there is no law that the statement of a police officer or excise officer cannot be accepted in the absence of support. If the police officer's single evidence is of such a quality that it cannot disbelieved, then on the basis of his sole evidence, a conclusion can be drawn about the recovery of something (narcotic substance). In the context of the opinion expressed in the above honorable judicial precedents, it is now to be considered whether as per the evidence in the case, the Investigating Officer has conducted the investigation by following the mandatory and directive provisions of the NDPS Act which is supported by other evidence in the case.

15. At this stage it has to be seen as to whether as per the provision of Section 42(1) of the NDPS Act, the Investigating Officer, Amit Gupta, Sub Inspector of the Police Department is allowed to investigate or not ?
16. Section 42(1) of the NDPS Act is reproduced hereunder: -



“42. Power of entry, search, seizure and arrest without warrant or authorisation.- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

*(a) enter into and search any such building, conveyance
or place;*

*(b) in case of resistance, break open any door
and remove any obstacle to such entry;*



(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

17. A careful perusal of the aforesaid provision would show that under Section 42 only officers mentioned therein and so empowered officers can make the arrest or search as provided if



they have reason to believe from personal knowledge or information qua offence(s). In both these provisions there are two important requirements. One is that the Magistrate or the officers mentioned therein firstly be empowered and they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the provision. It has been held in paragraph 11 of ***State of Punjab v. Balbir Singh (1994) 3 SCC 299*** as under: -

“11. But there are certain other embargoes envisaged under Sections 41 and 42 of the NDPS Act. Only a Magistrate so empowered under Section 41 can issue a warrant for arrest and search where he has reason to believe that an offence under Chapter IV has been committed so on and so forth as mentioned therein. Under sub-section (2) only a Gazetted Officer or other officers mentioned and empowered therein can give an authorization to a subordinate to arrest and search if such officer has reason to believe about the commission of an offence and after reducing the information, if any, into writing. Under Section 42 only officers mentioned therein and so empowered can make the arrest or search as provided if they have reason to believe from personal knowledge or information. In both these provisions there are two important requirements. One is that the Magistrate or the officers mentioned therein firstly be empowered and they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the provision. So far as the first



requirement is concerned, it can be seen that the Legislature intended that only certain Magistrates and certain officers of higher rank and empowered can act to effect the arrest or search. This is a safeguard provided having regard to the deterrent sentences contemplated and with a view that innocent persons are not harassed. Therefore if an arrest or search contemplated under these provisions of NDPS Act has to be carried out, the same can be done only by competent and empowered Magistrates or officers mentioned thereunder.”

Furthermore, their Lordships in paragraph 14 have held that whether there was such reason to believe and whether the officer empowered acted in a *bona fide* manner, depends upon the facts and circumstances of the case and will have a bearing in appreciation of the evidence.

18. Even in ***Baldev Singh’s case (supra)***, their Lordships of the Constitution Bench of the Supreme Court with regard to Section 42(1) of the NDPS Act have held in paragraphs 9 & 10 as under: -

“9. Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search, without a warrant between sunrise and sunset, and he may do so without recording his reasons of belief.



- 10. The proviso to sub-section (1) lays down that if the empowered officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief. Vide sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to sub-section (1), shall forthwith send a copy of the same to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.”*
19. Reverting to the facts of the case, in the instant case, it is undisputed that the investigation of the instant case was done by Amit Gupta, who was posted as Sub-Inspector of the Police Station, Ambikapur, District - Surguja on the date of incident, as such, we are of the considered view that he is entitled to proceed in the matters falls under the NDPS Act.



20. So far as submission of learned counsel for the appellant – Narayan Das in CRA No. 349 of 2021 that the provision of Section 50 of the NDPS Act has not been complied with as appellants-accused have not been apprised of their right to get searched by the Gazetted Officer or by the Magistrate is concerned, the Investigating Officer Amit Gupta (PW-7), in para-4 of his examination-in-chief, has stated that the accused were given notice under Section 50 of the NDPS Act regarding their right and only upon their consent, they were searched by the Police Officer. In para-19 of his cross-examination, this fact has been elicited by Investigating Officer-Amit Gupta, PW-7.
21. So far as contention of the appellant – Ambika Vishwakarma in CRA No. 260 of 2021 that if the entire quantity of Codeine is excluded from the total number of bottles seized, it would fall within the intermediate quantity, not the commercial quantity is concerned. In support of said contention, reliance has been placed in the matter of ***E.Micheal Raj*** (supra).
22. While dealing with the reference not agreeing with the view taken in the case of ***E.Micheal Raj*** (supra), the Hon'ble Supreme Court in the matter of ***Hira Singh*** (supra) has observed as follows :

“10. On merits whether any mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, the Statement of Objects and



Reasons of NDPS Act is required to be considered. As per the preamble of [NDPS Act, 1985](#), it is an Act to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the [NDPS Act](#) imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents.

10.1. In the case of [Directorate of Enforcement vs. Deepak Mahajan and Another](#) reported in (1994) 3 SCC 440, it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In [the said decision](#) this Court has also quoted following passage in Maxwell on Interpretation of Statutes, 10th Edition page 229:

"25.Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real



legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

10.2 Therefore, considering the statement of objects and reasons and the preamble of the [NDPS Act](#) and the relevant provisions of the [NDPS Act](#), it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from sub-clause (viiia) and (xxiia) of [Section 2](#) of NDPS Act emphasis is on Narcotic and Drug or Psychotropic Substance ([Sections 21, 22, 23, 24, 27](#) and [43](#)). Even in the table attached to the Notification dated 19.10.2001, column no. 2 is with respect to name of Narcotic Drug and Psychotropic Substance and column nos. 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19.10.2001 specifically provides that quantity shown against the respective drugs listed in the table also apply to the preparations of the drug and the preparations of substances of note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or the commercial quantity” with respect to Narcotic Drugs and Psychotropic Substance mentioned in column no.2 the quantity mentioned in the clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs / psychotropic drugs mentioned in column no.2 and any mixture or preparation that of with or without the neutral



material of any of the drugs mentioned in table, lesser of the small quantity between the quantities given against the respective Narcotic Drugs or Psychotropic Substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example, mixture of 100 gm is seized and the mixture is consisting of two different Narcotic Drugs and Psychotropic Substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid two respective Narcotic Drugs and Psychotropic Substance is required to be considered. For the purpose of determination of the “small quantity or commercial quantity”, in case of entry 239 the entire weight of the mixture / drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in the case of [E. Micheal Raj](#) (Supra) is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

8.3 At this stage, it is required to be noted that illicit drugs are seldom sold in a pure form. They are almost always adulterated or cut with other substance. Caffeine is mixed with heroin, it causes that heroin to vaporize at a lower rate. That could allow users to take the drug faster and get a big punch sooner. Aspirin, crushed tablets, they could have enough powder to amend reversal doses of drugs. Take example of heroin. It is known as powerful and illegal street drug and opiate derived from morphine. This drug can easily be “cut” with a variety of different substances. This means that drug dealer will add other drugs or non - intoxicating substances to the drug so that they can sell more of it at a lesser expense to themselves. Brown-sugar / smack is usually made available in power form. The substances is only about 20% heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. These are only few examples to show and demonstrate that even



mixture of narcotic drugs or psychotropic substance is more dangerous. Therefore, what is harmful or injurious is the entire mixture/tablets with neutral substance and Narcotic Drugs or Psychotropic Substances. Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated. There may be few punishment for “commercial quantity”. Certainly that would not have been the intention of the legislature.

10.4. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”, including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of NDPS Act would be achieved. Any other intention to defeat the object and purpose of enactment of NDPS Act viz. to Act is deterrent.

10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out.



The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in [Narcotic Drugs and Psychotropic Substances Act, 1988](#) came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of [NDPS Act](#) are required to be interpreted keeping in mind the object and purpose of [NDPS Act](#); impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted.”

23. Reverting to the facts of the present case, on search of suspect Ambika Vishwkarma, a cement colour trolley bag with Flyte King company's monochrome was found in his possession, which was opened and searched. R.C. KUFF COUGH SYRUP total 143 pieces, each containing 100 ml was found in it and a backpack in possession of second suspect Narayan Das which was blackish light sky blue in colour and of the company TYCOON was opened and searched which contained CODECTUS COUGH SYRUP 70 pieces, each containing 100 ml and ELDER QREX COUGH SYRUP 23 pieces, each of 100 ml in vials with labels containing a substance called Codeine Phosphate which was a narcotic drug, due to which search panchnama Ex.P-11 of the suspects was prepared. Thus, in the light of Judgment of Hon'ble Supreme Court in the Case of **Hira Singh** (supra), we



are of the considered opinion that the quantity so seized from the possession of the accused/ appellants would fall under the category of commercial quantity.

24. Considering the aforesaid facts and circumstances of the case and the submissions advanced by the learned counsel for the parties, material available on record and also considering the evidence of Investigating Officer Amit Gupta (PW-7) and in the light of Judgment of Hon'ble Supreme Court in the Case of **Hira Singh** (supra), we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt.
25. The last contention that has been raised on behalf of the appellants is that without assigning any special reason, the learned trial Court has awarded sentence for a period of 12 years to the appellants, which is more than the minimum sentence prescribed for offence under Section 21(c) of the NDPS Act.
26. Section 32B of the NDPS Act states about the facts to be taken into account for imposing higher than the minimum punishment, which reads as under:

“Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--

(a) the use or threat of use of violence or arms by the offender;



(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.”

27. The Supreme Court in the matter of **Rafiq Qureshi** (supra) has held that in a case where the court imposes a punishment higher than minimum relying on an irrelevant factor and no other facts as enumerated in Sections 32B(a) to (f) is present, award of sentence higher than minimum can be interfere with and observed in Para-23 & 24 as under:

“23. In view of the foregoing discussion, we are of the view that punishment awarded by the trial court of a sentence higher than the minimum relying on the quantity of substance cannot be faulted even though the Court had not adverted to the factors mentioned in clauses (a) to (b) as enumerated under Section 32B. However, when taking any factor into consideration other than the factors enumerated in Section 32B, (a) to (f), the Court imposes a punishment higher than the minimum sentence, it can be examined by higher Courts as to whether factor taken into consideration by the Court is a relevant factor or not. Thus in a case where Court imposes a punishment higher than minimum relying on a irrelevant factor and no other factor as



enumerated in Section 32B(a to f) are present award of sentence higher than minimum can be interfered with.

24. In the present case The High Court held that although gross quantity of 8.175 Kg. of Heroin was alleged to have been recovered from the appellant but actual quantity of Heroine which was found to be in possession was only 609.6 gm. The High Court held that since the appellant was found in possession of Narcotic Drugs as per the analysis report to 609.6 gm. which is much higher than the commercial quantity, punishment higher than the minimum is justified. The High Court reduced the punishment from 18 years to 16 years. We, thus, uphold the judgment of the trial court and the High Court awarding the punishment higher than the minimum, however, looking to all the facts and circumstances of the present case including the fact that it was found by the High Court that the appellant was only a carrier, we find that the ends of justice will be sub-served in reducing the sentence from 16 years to 12 years. Thus, while maintaining the conviction of the appellant the appellant is sentenced to undergo 12 years rigorous imprisonment with fine of Rs. 2 lakh and in default of payment of such fine the appellant shall further undergo for a simple imprisonment for six months. The appeal is partly allowed to the extent as indicated above. ”

28. As such, in view of discussion made hereinabove, in light of Section 32B of the NDPS Act coupled with above-quoted principle of law laid down in **Rafiq Qureshi** (supra), since no specific or any special reason has been assigned by the learned trial Court for awarding sentence higher than minimum to the appellants for having committed offence under Section 21(c) of the NDPS Act, in the considered opinion of this Court, while affirming the conviction of the appellants for offence under



Section 20(c) of the NDPS Act, we deem it appropriate to reduce his sentence of 12 years rigorous imprisonment, as awarded to them by the learned trial Court, to 10 years rigorous imprisonment. So far as the default sentence is concerned, the same is modified to the extent that in case of failure to deposit the fine amount awarded by the trial Court, the appellants shall undergo further rigorous imprisonment for one year instead of three years, as awarded by trial Court. It is ordered accordingly.

29. Consequently, both the criminal appeals are **partly allowed** to the extent indicated hereinabove. It is stated that the appellants are in jail, they shall serve out the remaining sentence as modified by this Court.
30. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice



Head – Note

While considering the mixture of narcotic drugs or psychotropic substance for the purpose of determining whether it would constitute “small quantity or commercial quantity”, not only the quantity of ‘offending drug’ but the quantity of ‘neutral substance’ mixed should also be taken into consideration.